

DEPONENT: SHARON SMITH

DATE: JUNE 22, 2001

REPORTER: GERRY HALL FULTON

* * * * *

FULTON BELANGER & ASSOCIATES
1310 NAVAJO COURT
LOUISVILLE, KENTUCKY 40207
(502) 897-1303 OR 1-800-726-0391

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I N D E X

WITNESS: SHARON SMITH

PAGE

Direct Examination by Mr. Berney

4

E X H I B I T S

NO.	D E S C R I P T I O N	PAGE
1	Amended Notice of Taking Videotape Deposition	6
2	Letter, 6-21-2001	16
3	Cigarette Advertising Code	81
4	Letter, 1-7-76, With Attachment	132
5	1936 Advertisement for Viceroy	160
6	Various Viceroy Advertising Campaigns from 1950 through 1956	161
7	Viceroy Agency Orientation Outline	168
8	Four Advertisements for Viceroy Cigarettes	174
8A	Four Advertisements for Viceroy Cigarettes	198
9	Viceroy Ad From The Saturday Evening Post	184
10	Viceroy Ad From The Evening Post, 3-28-42	186
11	Buy-Lines, by Nancy Sasser	190
12	Dentists Advising to Smoke Viceroy, Ad	190
13	Dentists Say Smoke Viceroy Cigarettes, Ad	195
14	Viceroy Ad	195
15	Viceroy Ad Referring to Reader's Digest	198
16	Viceroy Ad Referring to Reader's Digest	202
17	Viceroy Information About Health-Guard Filter inserted on the carton.	204

3

The following deposition of Sharon Smith was taken, pursuant to notice, at the law offices of Dinsmore & Shohl, 2000 Meidinger Tower, 462 South Fourth Avenue, Louisville, Kentucky 40202, on June 22, 2001, at the hour of 9:00 a.m., upon oral examination and to be used for all purposes in the trial of the above-entitled cause, in accordance with the Pennsylvania Rules of Civil Procedure.

A P P E A R A N C E S

FOR PLAINTIFFS: David Berney, Esquire
1528 West Walnut Street, Third Floor
Philadelphia, Pennsylvania 19102

FOR DEFENDANT: Frederick M. Erny, Esquire
Dinsmore & Shohl, LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202

Jeffery Raborn, In-house Counsel
for Brown & Williamson, Louisville,
Kentucky

ALSO PRESENT: Gail Phillips, Videographer

4

1 Sharon Smith, called in behalf of
2 Plaintiffs, after having been first duly sworn, was
3 examined and deposed as follows:

4 * * *

5 MR. BERNEY: Why don't we just go
6 around the record and just introduce ourselves. I'm
7 David Berney and I'm here on behalf of the plaintiff.

8 MR. ERNY: I'm Fred Erny. I'm here
9 on behalf of the defendant Brown & Williamson, and to
10 my right is Jeffery Raborn, who's in-house counsel for
11 Brown & Williamson here in Louisville, Kentucky.

12 * * *

13 DIRECT EXAMINATION

14 BY MR. BERNEY:

15 Q. Could you just state your name for
16 the record?

17 A. Yes. I'm Sharon Smith.

18 Q. Have you ever been deposed before?

19 A. Yes, I have.

20 Q. On how many occasions?

21 A. One.

22 Q. In what context?

23 A. It was a lawsuit filed by Liggett &
24 Meyers, I believe, and I'm not exactly sure of the
25 year, I think it was 1980 or around that time, against

5

1 Brown & Williamson.

2 Q. For, for what?

3 A. It was in regards to our marketing
4 of generic cigarettes. I believe it was an antitrust
5 case.

6 Q. Have you provided any type of
7 testimony in any other context?

8 A. In regards to my position? Sure.

9 Q. Yeah, in, in the context of Brown &
10 Williamson, or doing anything on behalf of Brown &
11 Williamson.

12 A. No, I haven't.

13 Q. I'm going to give you a set of
14 instructions. These, these may be familiar to you,
15 since you've already been deposed before. I'm going
16 to ask you a series of questions. If you don't
17 understand any of the questions I ask, please let me
18 know and I will clarify the question. If you answer
19 the question, I'll assume then that you understood the
20 question.

21 A. Okay.

22 Q. If you don't hear one of my
23 questions, let me know and I'll be happy to repeat it.
24 My understanding is there might be times when you need
25 to take a break, and that's fine. I'd prefer,

6

1 however, that if we're in the middle of a question and
2 answer session that you answer the question first. In
3 terms of answering questions, I would also ask that
4 you verbalize your responses, since it's difficult for
5 the court reporter to take down noddings of the head.

6 Is there any particular reason why
7 you can't provide competent testimony today?

8 A. No, there's not.

9 Q. Are you taking any types of
10 medications that might affect your ability to provide
11 competent testimony today?

12 A. No.
13 Q. Do you understand all of these
14 instructions?
15 A. Yes, I do.
16 MR. BERNEY: Why don't we mark this
17 as Plaintiffs' Exhibit 1.
18 (Whereupon, the hereinabove referred
19 to document was marked Plaintiffs' Exhibit Number 1,
20 and attached hereto.)
21 Q. What we marked as Plaintiffs'
22 Exhibit 1 is a notice of taking videotape deposition.
23 Let me show that to you. Have you seen that document
24 before?
25 (The document is handed to the

7

1 witness.)
2 A. Yes, I have.
3 Q. And are you competent to provide
4 testimony regarding the various areas that are
5 enumerated on the deposition notice?
6 MR. ERNY: I'm going to object to
7 the use of the term competent in the sense that you
8 may have a legal meaning for it which she may not
9 understand, so I guess it's an objection to the form.
10 MR. BERNEY: You can answer
11 A. Could you then restate the question,
12 please?
13 Q. Sure. Are you competent to provide
14 testimony to the various areas listed on this
15 deposition notice?
16 MR. ERNY: Same objection.
17 A. Could you define what you mean by
18 competent, please?
19 Q. Do you have knowledge regarding the
20 various areas listed on the deposition notice?
21 A. Yes, I do.
22 Q. Do you know anyone who has more
23 information regarding the various areas listed on the
24 deposition notice than you?
25 A. No, I do not.

8

1 MR. ERNY: Can I make a statement
2 for the record. In connection with the deposition
3 notice I wrote to Mr. Mangan about the scope and the
4 content of notice and in particular with regard to
5 category number 10 about knowledgeable claims, cross-
6 claims and discovery raised in the present litigation.
7 The reading of legal pleadings and briefs is not
8 something within the confines of Ms. Smith's work, and
9 so we are not proffering her as a person most
10 knowledgeable about that fact. I think you will find
11 out when you question her that she has very little
12 specific information about this particular case. I
13 set that forth in a letter to Mr. Mangan. I will be
14 happy to make that a part of the record, if you would
15 like, but subject to that statement, I think her
16 answer to your question about being the person most
17 knowledgeable as to the other categories is correct.
18 Q. So you're saying with the exception
19 of category -- was it 10?
20 MR. ERNY: Category number 10. And
21 by way of background, when Mr. Mangan first wrote to
22 us asking us for a 4007 deponent, the categories that

23 he listed in his letter were 1 through 9, but not 10,
24 and then when we proffered Ms. Smith he sent the
25 notice and added number 10, and I objected to that.

9

1 Subject to that objection, she is the person most
2 knowledgeable, but not with regard to number 10.

3 MR. BERNEY: Okay.

4 Q. (By Mr. Berney) How much time -- how
5 many -- how many different days did you spend doing
6 anything to prepare for this deposition?

7 A. It has been approximately four
8 different days.

9 Q. And in total how many hours did you
10 spend doing anything to prepare for this deposition?

11 A. I would estimate about twenty hours.

12 Q. And what did you do to prepare?

13 A. I met with the attorneys on two
14 different days and I also on my own reviewed the
15 Brown & Williamson corporate Web site.

16 Q. How much time did you spend
17 reviewing the Web site?

18 A. Approximately three hours, I would
19 say.

20 Q. And what specifically did you review
21 on the Web site?

22 A. I reviewed the corporate Web site in
23 terms of the company policy on smoking and health,
24 addiction, marketing principles. I believe that's it.

25 Q. And when you say marketing

10

1 principles, what do you mean by that?

2 A. The company's policy on marketing
3 principles is in materials of various regulations that
4 we followed.

5 Q. And what regulations did you find
6 that you followed?

7 A. I don't know that I can articulate
8 all of them. They are all covered in our Web site but
9 basically in terms to have our principles regarding
10 that we market only to smokers twenty-one years of age
11 and older; that we followed the regulations imposed by
12 the master settlement agreement; that we have also
13 self-imposed some additional regulations, such as age
14 of models, things of that sort.

15 Q. Anything else that you can think of?

16 A. Not that I can think of offhand.

17 Q. Did you actually review documents on
18 the Web site?

19 A. No, I did not.

20 Q. Did you review anything pertaining
21 to Viceroy cigarettes on the Web site?

22 A. No, I did not.

23 Q. And which attorneys did you meet
24 with?

25 A. I met with the two attorneys here,

11

1 as well as with Ben Shively.

2 Q. Can you spell the last name?

3 A. I assume it's S-h-i-v-e-l-y. I
4 don't know if that's correct, but I assuming that's
5 the spelling of his last name.

6 Q. And anyone else?

7 A. There was one other attorney. I'm

8 sorry. I can't remember his name.
9 Q. And who is, who is Ben Shively; he's
10 an attorney?
11 A. He's an attorney, yes.
12 Q. Is he in-house counsel for Brown &
13 Williamson?
14 A. He is not a Brown & Williamson
15 employee.
16 Q. Do you know where he -- who he's
17 affiliated with?
18 A. I can't recall the name of the firm.
19 Q. Do you know if it's Dinsmore &
20 Shohl?
21 A. I don't know.
22 Q. Did you meet with anyone else in
23 terms of doing anything to prepare for this
24 deposition?
25 A. No, I did not.

12

1 Q. Other than what you have seen on the
2 Web site to prepare for this deposition, did you
3 review any documents to prepare for this deposition?
4 A. Yes, I did.
5 Q. And what documents did you review?
6 A. I reviewed the documents that my
7 attorneys have provided for my review.
8 Q. What documents were those?
9 A. I can't recall all the documents.
10 They were the documents that were provided in response
11 to this notice.
12 Q. Do you, do you have those documents
13 here today?
14 MR. ERNY: I do.
15 MR. BERNEY: How voluminous are
16 they?
17 MR. ERNY: Not very voluminous at
18 all.
19 MR. BERNEY: Can I take a look at
20 them during, let's say, lunch break?
21 MR. ERNY: Sure.
22 Q. Did you do anything else to prepare
23 for this deposition, other than what you've just
24 mentioned?
25 A. No, I did not.

13

1 Q. Were there particular documents that
2 you would have liked to take a look at that you didn't
3 have an opportunity to take a look at?
4 A. No.
5 Q. What's your understanding of the
6 facts that give rise to this particular lawsuit?
7 A. My understanding is what was stated
8 in the notice.
9 Q. Do you know of any other cases in
10 which, in which a smoker of Viceroy cigarettes sued
11 Brown & Williamson?
12 A. I'm not familiar with specific
13 cases, no.
14 Q. Have you heard of any other cases,
15 not necessarily knowing about the specific cases
16 involving Viceroy cigarettes, per se?
17 A. No, I have not.
18 Q. Have you ever heard of the case of

19 Dewey versus Brown & Williamson, and Dewey being
20 D-e-w-e-y?

21 A. No, I'm not familiar with that.
22 Q. Have you reviewed any depositions
23 for or in preparation of giving testimony today?
24 A. No, I have not.
25 Q. Did you see what's called the

14

1 plaintiffs' complaint in this case?
2 A. I'm not sure what a plaintiff's
3 complaint is.
4 Q. Okay. Do you know who Allen Graham
5 Forsythe is, F-o-r-s-y-t-h-e?
6 A. Yes, I do.
7 Q. And who is that individual?
8 A. Allen Forsythe was previously a
9 Brown & Williamson employee. He is currently not a
10 Brown & Williamson employee. He previously worked in
11 the marketing department of Brown & Williamson.
12 Q. Do you know when he left Brown &
13 Williamson?
14 A. I don't remember the specific year.
15 Q. Do you know approximately?
16 A. I don't know. I would estimate
17 sometime in the 1980s.
18 Q. Did you work with him?
19 A. No, I knew him. I did not work with
20 him.
21 Q. Do you know why he left?
22 A. No, I do not.
23 Q. Do you know where he is now?
24 A. No, I do not.
25 Q. I just want to get some basic

15

1 information from you. What's your date of birth?
2 A. February 6, 1954.
3 Q. So you're about forty -- what,
4 forty-seven?
5 A. Yes, I am.
6 Q. And where do you live?
7 A. DELETED
8 Q. And what's your address?
9 A. DELETED
10
11 Q. DELETED
12 A. DELETED
13 Q. DELETED
14 A. DELETED
15 Q. And how long have you lived in
16 DELETED for?
17 A. My entire life.
18 Q. And you work at Brown & Williamson?
19 A. Yes, I do.
20 Q. And how long have you worked at
21 Brown & Williamson?
22 A. Twenty-six years.
23 Q. That's a long time. Continuously?
24 A. Continuously, yes.
25 Q. Let me show you another document,

16

1 which is a letter dated June 21st, 2001 from your
2 attorney Frederick Erny to Charles Mangan, and why
3 don't we mark that as Plaintiffs' Exhibit 2.

4 (Whereupon, the hereinabove referred
5 to document was marked Plaintiffs' Exhibit Number 2,
6 and attached hereto.)
7 Q. This is a letter to Mr. Mangan which
8 purports to give your work background and some other
9 information regarding you. And why don't you take a
10 moment just to look at that?

11 (The document is handed to the
12 witness.)

13 A. Okay.

14 Q. Is the information contained on that
15 letter correct?

16 A. Yes, it is.

17 Q. In terms of providing a work
18 history, is it missing any particular positions that
19 you may have had over the years at Brown & Williamson?

20 A. It is not missing any positions,
21 although on category number 3 when it talks about
22 trade marketing and sales department, I had various
23 positions within the trade marketing and sales
24 department that aren't specifically laid out here.

25 Q. And your current position right now
17

1 is director of Lucky Strike; is that right?

2 A. That's correct.

3 Q. And as director of Lucky Strike,
4 what type of job responsibilities do you have?

5 A. As a director of Lucky Strike I run
6 the Lucky Strike brand group, which involves my
7 responsibility as being responsible for the marketing
8 of Lucky Strike cigarettes.

9 Q. As a result, have you had an
10 opportunity to familiarize yourself with the heritage
11 and history of Lucky Strike cigarettes?

12 A. Yes, I have.

13 Q. And would that include reviewing old
14 ad -- old ads for Lucky Strikes?

15 A. I have reviewed some old ads for
16 Lucky Strike, yes.

17 Q. Would that also include reviewing
18 marketing plans for Lucky Strike cigarettes?

19 A. In some cases, yes.

20 Q. Do you know if Lucky Strikes was
21 ever marketed to children?

22 MR. ERNY: Let me object to this
23 line of questioning. She was asked -- we were asked
24 and she has been proffered as the person in essence
25 most knowledgeable about Viceroy, and not Lucky

18

1 Strikes, and I understand you taking some background,
2 but now we're getting, I think, out of background and
3 more into specifics, and, and she hasn't been asked
4 for that purpose and we're are not presenting her for
5 that purpose. So I, I would ask that you kind of keep
6 a fine line on where you're going here so that we
7 don't have to shut that line of questioning down.

8 MR. BERNEY: Just in brief response.
9 You're certainly entitled to object and under the
10 Pennsylvania Rules you're not entitled to instruct the
11 witness not to answer. So you're objection is noted.

12 MR. ERNY: And I understand that and
13 I wasn't talking about shutting -- instructing the
14 witness not -- I was talking about shutting down the

15 deposition, because she has not been asked for nor has
16 she been prepared for to go into any great length with
17 regard to Lucky Strikes. That's not what we're here
18 for today. You have the ability and had the ability
19 to seek a person most knowledgeable about Lucky
20 Strikes if it was pertinent to the Daly case, and you
21 have not. That's, that's what my objection is.

22 MR. BERNEY: Okay. And, and just in
23 brief response, the standard for discovery under the
24 Pennsylvania Rules of Civil Procedure is whether or
25 not the question is, is designed or reasonably

19

1 calculated to lead to the discovery of admissible
2 evidence regardless of whether or not she's proffered
3 for a particular reason. I understand for purposes of
4 Rule 4007.1E that she has a particular purpose here,
5 but that does not mean that she's not allowed to be
6 asked questions outside the scope of the deposition
7 notice --

8 MR. ERNY: Oh, I --

9 MR. BERNEY: -- but the objection is
10 noted.

11 MR. ERNY: And, and just for the
12 record, I, I disagree with the last part of, of, of
13 what you said, but we can agree to disagree.

14 Q. Do you know if Lucky Strikes was
15 ever marketed to children?

16 A. No, it was not.

17 Q. Do you know if Lucky Strikes was
18 ever marketed or directed to people under the age of
19 eighteen?

20 A. Not to my knowledge.

21 Q. Have you specifically reviewed
22 marketing plans or, or anything pertaining to Lucky
23 Strike, the history of Lucky Strike, to ascertain an
24 answer to that particular question?

25 A. No, I have not.

20

1 Q. And then prior to being director of
2 Lucky Strike, you were director of creative, creative
3 services?

4 A. That's correct.

5 Q. So you were a director of Lucky
6 Strike beginning in 1999, and that's your current
7 position, from 1996 to 1999 you are a director of
8 creative services?

9 A. I was director of creative services
10 during that time period, that's correct.

11 Q. And what were your responsibilities
12 as director of creative services?

13 A. During that time period I was
14 responsible for developing the advertising for all of
15 the brands which Brown & Williamson advertised at that
16 time.

17 Q. And that would include Viceroy?

18 A. Viceroy was not advertised during
19 that time period.

20 Q. When was it that Brown & Williamson
21 stopped advertising Viceroy?

22 A. I don't remember the exact date.

23 Q. Is Viceroy currently advertised?

24 A. I don't believe so, no.

25 Q. Approximately when did Brown &

1 Williamson cease advertising Viceroy cigarettes?

2 A. I would estimate it was the late
3 '70s, perhaps early '80s.

4 Q. Do you know why they stopped
5 advertising Viceroy's?

6 A. As we would stop advertising any
7 particular brand; it depends on which brands are
8 the -- are determined to be the strategic focus for
9 the company, and Viceroy became not the strategic
10 focus for the company.

11 Q. And what's your understanding as to
12 why that, why that was?

13 A. I don't know.

14 Q. In terms of your position as
15 director of creative services, that, that obviously
16 included reviewing advertisements as well as creating
17 advertisements?

18 A. That review -- that did involve
19 reviewing advertising. I don't know what you mean by
20 creating advertising. If you could be more specific.

21 Q. Okay. In terms of reviewing
22 advertising, exactly what did you do?

23 A. Okay, I worked with advertising
24 agencies who, based on our brief to them, would
25 develop creative to be used in advertising.

1 Q. You said based on your?

2 A. Brief.

3 Q. And what does that mean, brief?

4 A. A brief is something that as a
5 company we would provide to our agencies, which
6 delineated what it was we were looking for our
7 advertising to do for a particular brand.

8 Q. Can you give me an example so I
9 understand.

10 A. An example on Lucky Strike currently
11 would be that I would brief, excuse me, brief our
12 agency or advertising agency, that what we were trying
13 to do with Lucky Strike is to convince current smokers
14 of a brand like Marlboro or Camel, who are over the
15 age of twenty-one, to switch to Lucky Strike.

16 Q. So, so that would be the, the extent
17 of the brief that you provided to your particular ad
18 company, or would there be more information included?

19 A. There would possibly be more
20 information included.

21 Q. Like, like what?

22 A. For example, the example I just gave
23 you on the -- on Lucky Strike. We would include
24 information such as -- let me think of specific
25 examples -- information such as current consumers of

1 Marlboro or Camel, in this example, between the ages
2 of twenty-one and thirty, for example, and what their
3 current perceptions are of Lucky Strike and how we
4 would like to change those perceptions. For example,
5 these consumers currently believe Lucky Strike is old
6 and non-filtered, and we want to change those
7 perceptions of Lucky Strike as being current, more up
8 to date, a brand for someone like them. So that sort
9 of information, background information, would be
10 included in a brief.

11 Q. How would you get the information in
12 terms of what people perceived of the Lucky Strike
13 cigarette in that particular example?
14 A. We would get that information from
15 our own marketing research department who do research
16 to gather that information.
17 Q. And how long has the -- how long has
18 Brown & Williamson had a marketing research department
19 for?
20 A. Ever since I've worked there.
21 Q. And do you know whether or not the
22 marketing research department has done research on
23 Viceroy cigarettes?
24 A. I'm sure they have at some point.
25 Q. Are you familiar with any particular

24

1 research that the marketing research department has
2 done on Viceroy cigarettes?
3 A. No, I'm not.
4 Q. Have you ever seen any documents
5 pertaining to Viceroy cigarettes and the research that
6 the marketing research department has done on Viceroy
7 cigarettes?
8 A. No, I have not.
9 Q. What's a creative?
10 A. I'm sorry. Could you repeat the
11 question?
12 Q. What's a creative?
13 A. There are many different definitions
14 of creative. It's a pretty broad term. Could you be
15 more specific, please?
16 Q. Yeah. I thought that you used the
17 term creative in terms of you provide a brief to the
18 ad agency and they come up with a creative.
19 A. Oh, yes. In that context the
20 creative is examples of advertising recommendations.
21 It doesn't necessarily include, or it doesn't
22 necessarily mean that we run that advertising; it's
23 just examples of how the ad agency recommends meeting
24 the brief. It would in -- the creative includes
25 illustrations or photographs, copy; in essence, a mock

25

1 ad.
2 Q. So you provide the ad agency the
3 brief, they come up with the creative. What's the
4 next step of the process in terms of developing an ad?
5 A. Okay. Generally ad agencies come up
6 with multiple creative responses to a brief. The next
7 step would be that the brand group today -- are you
8 asking specifically how it would work today or how --
9 Q. Yes.
10 A. -- it worked when I was in creative
11 services?
12 Q. Actually why don't you tell me when
13 you were in dir -- when you were in creative services
14 how it worked?
15 A. Okay. The ad agency would develop
16 again different creative in response to the brief;
17 they would bring it back to me or my department in
18 creative services. We would review the creative to
19 assure that it, in our opinion, met the brief, and
20 then we would review that creative with more senior
21 management.

22 Q. For purposes of having them sign
23 off, or for what purposes?
24 A. For purposes of them agreeing to
25 then take the creative into research with consumers.

26

1 Q. So at some point after you get a
2 bunch of creatives, do you whittle it down and pick
3 particular creatives that you want to test to see
4 whether or not consumers respond positively to them?
5 A. Generally what we do is, we get
6 multiple creative that comes back from the ad agency.
7 We review it with senior management within the
8 company, also with the law department, corporate youth
9 responsibility department, and at that time we
10 generally don't narrow it down, but take it to focus
11 groups of consumers, who then respond to the creative,
12 and often we go through multiple rounds of research,
13 narrowing it down as we go.
14 Q. And then what's the next step?
15 A. Once we have isolated a particular
16 creative campaign, assuming that that happens,
17 sometimes the next step is, you go back to the drawing
18 board because none of the creative works well with
19 consumers, but hopefully you have some creative that
20 does work well with consumers that does accomplish
21 what you want it to accomplish in your brief and you
22 are able to, after multiple rounds of research, narrow
23 it down to one campaign.
24 The next step at that point is to
25 again review it with the law department, corporate

27

1 youth responsibility as well as senior management
2 within the company.
3 Q. Which particular senior management?
4 A. In today's organization at Brown &
5 Williamson, we have brand management structure, so it
6 would be the senior person on the brand; it would be
7 myself in the case of Lucky Strike. Then it would be,
8 as you would go up the hierarchy of management, so in
9 my case I'm the head of Lucky Strike, but my boss is
10 over more than one brand, so he would review it as
11 well. Then it would go eventually to the senior vice
12 president of marketing for review and ultimately to
13 the CEO of the company before we'd run the
14 advertising.
15 Q. Who's the C -- presently, who's the
16 CEO?
17 A. Susan Ivey.
18 Q. How do you spell her last name?
19 A. I-v-e-y.
20 Q. And from 1996 to 1999, who was the
21 CEO?
22 A. Nick Brookes.
23 Q. And Brookes has an e at the end, an
24 e-s?
25 A. B-r-o-o-k-e-s.

28

1 Q. Prior to 199 -- is there anything
2 else in terms of the process for, for developing the
3 ad, other than what you've just described?
4 A. Not that I can think of.
5 Q. During your tenure at Brown &
6 Williamson, was that generally the process as well, or

7 do you know whether there were substantial changes or
8 substantial differences in the process from what you
9 just described?

10 MR. ERNY: Object to the form. You
11 can answer the question.

12 A. I'm sorry. Could you repeat the
13 question?

14 Q. Sure. You just described for us the
15 process for how an ad is essentially developed;
16 correct?

17 A. Yes.

18 Q. Was that essentially the process in
19 place from the time that you started at Brown &
20 Williamson until about 1996?

21 A. I couldn't respond beginning in 1974
22 because I wasn't in the marketing department, but ever
23 since I've been in the marketing department, yes, that
24 has been the process.

25 Q. And then from 1995 to 1996 you were
29

1 brand director for Misty and Capri?

2 A. That's correct.

3 Q. And what did your job
4 responsibilities consist of as brand director for
5 Misty and Capri?

6 A. They were the similar
7 responsibilities that I have today as brand director
8 of Lucky Strike.

9 Q. Any substantial differences than
10 what you described as being the responsibilities for
11 director of Lucky Strike?

12 A. No, the responsibilities are the
13 same.

14 Q. And then from 1994 to 1995 you were
15 brand manager for C -- I'm sorry -- GPC and, and Value
16 brands?

17 A. That is correct.

18 Q. And what were your responsibilities
19 as brand manager for GPC and Value brands?

20 A. Basically very similar
21 responsibilities as a brand director, but I wasn't at
22 that level, so I reported to a brand director. But as
23 a brand manager, it's a position in which you do the
24 same sorts of activities; you just don't have the
25 ultimate accountability for the brand.
30

1 Q. What are Value brands?

2 A. Value brands are what we call brands
3 that are priced below premium price.

4 Q. Can you give me an example?

5 A. Generic brands, and, in the case of
6 Brown & Williamson, Raleigh Extra is priced below that
7 price. GPC is, in fact, a Value brand. Viceroy today
8 is a Value brand.

9 Q. When did Viceroy become a Value
10 brand?

11 A. I don't know the exact year Viceroy
12 became a Value brand.

13 Q. Approximately?

14 A. I believe sometime in the '80s. I
15 don't know for sure.

16 Q. And do you know why it became a
17 Value brand?

18 A. Same reason other brands become
19 Value brands; it's competitive pressure, because there
20 are other Value brands in the industry and they're
21 very competitive with our brand and it's a response to
22 competitive pressure.

23 Q. And before it became a Value brand,
24 what would it -- what would its designation be?

25 A. A premium price brand.

31

1 Q. Is that the same thing as a full
2 revenue brands; is that a term that you're familiar
3 with?

4 A. It's the same thing.

5 Q. And then from 1992 to 1994 you were
6 a marketing manager for, for Value brands; correct?

7 A. That is correct.

8 Q. And how were your responsibilities
9 different as a marketing manager for Value brands than
10 as a brand manager for Value brands?

11 A. During that time period Brown &
12 Williamson did not have a brand management structure.
13 We had somewhat what we call a functional structure in
14 which there wasn't a brand manager responsible for a
15 particular brand. As a marketing manager, I was
16 responsible for advertising and promotion of the
17 brands under my responsibility, but not the full
18 responsibility for the brand.

19 Q. And were you involved in the
20 advertising and promotion of Viceroy's during this time
21 period?

22 A. I'm trying to recall. I was
23 involved with the promotion of Viceroy. I don't
24 recall that Viceroy was advertised during this time
25 period.

32

1 Q. And how would Viceroy's have been
2 promoted during this time period?

3 A. When I refer to promotion I refer
4 primarily to in-store signage. So it would include --
5 and my responsibilities would include developing
6 posters or in-store signage that would go on displays
7 that would house Viceroy cigarettes, for example.

8 Q. And would the poster also be some
9 type of advertisement for Viceroy, or would it simply
10 say Vice -- well, let me just stop right there. Is
11 the purpose of the signage also as some type of
12 promotion and advertisement for Viceroy to try and
13 convince people to smoke it, other than simply
14 announcing we have Viceroy's in this particular store?

15 MR. ERNY: Object to the form.

16 A. Could you define advertisement?
17 That term is a broad term; it's used differently by
18 different people.

19 Q. What was the purpose of the, of the
20 signage in the stores for Viceroy cigarettes?

21 A. The purpose of the signage for
22 Viceroy is the same as the purpose for signage for any
23 brands that we put in the store, which is to
24 communicate to other smokers and to current Viceroy
25 smokers or smokers of current, current smokers of a

33

1 brand, that, one, that brand is available in that
2 store, in many cases for Value brands; what the price

3 is of that product in the store, and just as a
4 communication for awareness.
5 Q. Who would create the signages for
6 the posters?
7 A. Can you tell me what you mean by who
8 would create?
9 Q. Was there a process involved in
10 terms of creating the signage?
11 A. Yes.
12 Q. And would that process include going
13 to your ad agencies or some type of outside consulting
14 agency to develop the signage?
15 A. Generally for signage in a retail
16 store, we would not use what we call our ad agencies,
17 who are agencies who develop our advertising that is
18 placed in the media. We use instead local agencies to
19 help us develop artwork for the signage, which then we
20 go and have someone print for us.
21 Q. Under 4b, listed on the June 21st,
22 2000 letter, it says 1992-1994 you served as marketing
23 manager for Value brands, and then after that it says,
24 'During this time, Marketing operated under a
25 "functional", and functional's in quotation marks,

34

1 'structure instead of a brand management structure."
2 What does that mean?

3 A. That means that we weren't under
4 a -- what is typically a brand management structure,
5 but rather we were structured within the marketing
6 department for various functional expertise. A
7 marketing manager, as I mentioned earlier, our
8 particular functional expertise was advertising and
9 promotion. There were other departments that have
10 expertise for other aspects of a brand.

11 Q. Like what?

12 A. For example, packaging. Another
13 example, there would be a separate strategy
14 development group.

15 Q. And then you were also -- then in
16 between 1989 to 1991 you were an associate brand
17 manager for a number brands, including Viceroy; is
18 that right?

19 A. That is correct.

20 Q. And what were your responsibilities
21 in that position?

22 A. An associate brand manager is a
23 entry level brand management position, and generally
24 responsibilities involve learning how to become a
25 brand manager, but specific responsibilities for an

35

1 associate brand manager would generally include
2 monitoring the budget for a brand, working with the
3 brand manager and local agencies to develop retail
4 signage, attending meetings to learn the creative
5 development process with an ad agency. Basically it's
6 the entry level position.

7 Q. Anything else?

8 A. Not specifically, that I can recall.

9 Q. And then from 1982 to 1988, you were
10 in the trade marketing and sales department?

11 A. Until 1989, yes.

12 Q. '89. And tell me what types of
13 different jobs you had during that time period?

14 A. Okay, in 1982, when I entered what
15 is currently called trade marketing, at the time was
16 called sales department, I was in what was called
17 sales planning, and I had the position of a supervisor
18 sales planning, and was in that position, I don't know
19 exact number of years, but for a couple of years.
20 Moved from that position to the trade development
21 position, still within the corporate sales department,
22 and worked in that position for approximately a year,
23 and then was promoted to manager of sales
24 communications, also within the corporate sales
25 department.

36

1 Q. Anything else?
2 A. No.
3 Q. And what were your responsibilities
4 as a supervisor; was it supervisor of sales planning?
5 A. Yes.
6 Q. What were your responsibilities?
7 A. I had various project
8 responsibilities. As I recall, some of my projects
9 included evaluating whether our salespeople should
10 drive vans or cars; evaluating or working with other
11 people within our sales department in terms of
12 determining more effective call coverage or more
13 effective ways in which they call on various retail
14 stores, and basically just doing projects that were
15 assigned to me by my manager.
16 Q. And what were your responsibilities
17 in the trade development position?
18 A. I was an analyst in that position
19 and actually supervised another analyst. I was senior
20 analyst I guess in that position. My responsibilities
21 in the trade development department included
22 developing analyses of our top one hundred accounts.
23 By accounts I mean our top one hundred customers,
24 primarily chains, such as Wal-Mart, Kroger, for
25 example; developing analyses of the cigarette category

37

1 of their business; trying to help provide business
2 reviews for our key account managers to present to
3 these chains.
4 Q. I think you said you did analyses of
5 cigarette categories; is that right?
6 A. I believe I said that, yes.
7 Q. What does that mean?
8 A. For example, if you're talking about
9 a Kroger or a supermarket chain, back then many -- in
10 many cases they weren't that familiar with the
11 cigarette category and how profitable it was for them,
12 et cetera, and I would review trade journals and pull
13 a lot of that information for them and put it together
14 in the report.
15 Q. With the idea of being what; what
16 was the purpose?
17 A. The purpose was to help pull
18 together a business analysis for our key account
19 managers to present back to the particular chains.
20 Generally the objectives were to introduce into
21 distribution a particular brand or to get better
22 retail space availability for our brands.
23 Q. So, in other words, and correct me
24 if I'm wrong, what you're trying to do is show them

25 that this is a well selling cigarette and you should
38
1 stock up on this type of cigarette; is that --
2 MR. ERNY: Objection.
3 Q. You can answer.
4 A. Could you repeat the question?
5 Q. Sure. Is the idea behind the sales
6 analyses of the cigarette categories, that you're
7 trying to persuade particular stores to stock up on a
8 particular brand of cigarette?
9 MR. ERNY: Same objection.
10 A. Not necessarily, no. That's not
11 necessarily the objective for that.
12 Q. So then what is the objective;
13 what -- how is this profitable, if it is profitable,
14 to Brown & Williamson to be doing this?
15 A. Well, for example, the example I
16 gave you previously in terms of retail space
17 allocation, in many cases some of these presentations
18 would be developed to encourage a particular chain to
19 give a certain amount of space to Brown & Williamson
20 brands as opposed to competitive brands.
21 Q. I see. Would that also include
22 cigarette analyses or analyses of, of Viceroy
23 cigarettes?
24 A. I don't recall at that time.
25 Q. Did you have any other

39
1 responsibilities, other than what you just mentioned
2 in your position as -- in your position in trade
3 development?
4 A. The only other thing I can recall is
5 I had responsibility for helping conduct some training
6 sessions with our own account managers in terms of
7 some computer programs that were developed for them.
8 Q. Would any of those computer programs
9 involve Viceroy cigarettes?
10 A. No, they are were not brand
11 specific.
12 Q. And what type of computer programs
13 were you developing?
14 A. I didn't develop the programs. I
15 just helped train some of our account managers,
16 programs that were involved by our computer systems
17 department, but the -- an example of a type of program
18 was profitability per square foot program in which
19 they could enter various information and it would
20 calculate profitability of, of per square foot of
21 carrying Brown & Williamson products.
22 Q. And profitable to whom?
23 A. To the retailer.
24 Q. And then I think you also indicated
25 that you were manager of sales communications?

40
1 A. That's correct.
2 Q. And what were your responsibilities
3 as manager of sales communications?
4 A. I was responsible for the -- for
5 managing sales communications department, which was
6 responsible for developing all communications that
7 went to our field sales force. At that time we didn't
8 have computer communications, so it was all written
9 communications that went to our field sales force as

10 well as communications that would go from Brown &
11 Williamson directly to our distributors, who purchased
12 our products.

13 In addition, I was responsible for
14 what is called our consumer information center, which
15 was a group of people who answered the telephone when
16 consumers called with questions, complaints, inquiries
17 about our products.

18 Q. Anything else?

19 A. No, I don't believe so.

20 Q. During that time period did the
21 consumer information center field phone calls in which
22 people might have asked whether or not cigarette
23 smoking causes lung cancer?

24 MR. ERNY: Objection.

25 A. I don't recall them getting any

41

1 questions to that effect.

2 Q. If somebody had gotten that call,
3 what would their response be?

4 MR. ERNY: Objection.

5 A. I don't recall them getting that
6 question, but the response would have been, had they
7 gotten a question like that, to direct any of those
8 such calls to our public affairs group.

9 Q. And why would that be directed to
10 public affairs?

11 A. Because the people who worked for me
12 weren't, weren't -- they were -- the people that
13 worked for me were not informed of all the information
14 re -- except for -- their responsibility was really to
15 take down the information. Generally consumers
16 called, complaining that my pack of cigarettes tasted
17 stale, or my pack of cigarettes -- you know, I'm not
18 able to find this brand in the store; can you tell me
19 how to find this brand. So they had information on
20 how to respond to particular questions like that.

21 Q. If somebody had called to ask
22 whether or not cigarettes are addictive, would
23 somebody from the consumer information center answer
24 that question, or would that question be routed to
25 someone else?

42

1 A. During that time period the question
2 would have been referred or directed directly to the
3 public affairs department.

4 THE WITNESS: Could we take a break
5 in a moment, please?

6 MR. BERNEY: Absolutely. Why don't
7 we take a break right now.

8 MR. ERNY: A couple of minutes?

9 MR. BERNEY: Sure.

10 (Whereupon, a short recess was
11 taken.)

12 Q. And then from 1977 to 1982 you were
13 a marketing research analyst?

14 A. That's correct.

15 Q. And what did you do as a marketing
16 research analyst?

17 A. Basically in that position I was
18 responsible for tracking daily, monthly, weekly,
19 annual sales. Unfortunately back then we weren't very
20 computer literate, so all that was done by hand, and

21 my responsibility was to track the, the sales of our
22 brands and our company and report that to various
23 people within the company. That was my primary
24 responsibility.

25 Q. What other responsibilities did you
43 have other than that?

2 A. I worked with an outside company
3 called MSA, Management Science Associates, who we
4 provided our sales information to, as did our
5 competitors, and then we received back market share
6 reports from them.

7 Q. Did, did they provide any other
8 information aside from market share reports?

9 A. No.

10 Q. And then what other responsibilities
11 did you have as a marketing research analyst?

12 A. Those were basically my
13 responsibilities.

14 Q. And what was the purpose of having
15 market share reports?

16 A. The purpose was for us to be able to
17 see how our brands or how our company was performing
18 relative to our competitive companies or competitive
19 brands.

20 Q. And that would also include Viceroy
21 cigarettes?

22 A. Yes, it would.

23 Q. And then from 1974 to 1977 you were
24 a laboratory specialist?

25 A. That's correct.

44

1 Q. And what's a laboratory specialist?

2 A. I was a laboratory technician, if
3 you will, who worked in our factory, which at the time
4 was located here in Louisville, and my
5 responsibilities included testing cigarettes that were
6 made in that factory in terms of moisture levels and
7 weight and menthol content.

8 Q. Any other particular characteristics
9 that you were testing?

10 A. No.

11 Q. And what's your understanding of how
12 cigarettes were kept moist?

13 A. I don't really have an understanding
14 of how they were kept moist.

15 Q. So then how would you -- what would
16 you do to test for moisture?

17 A. We had machines in the lab that we
18 would actually put product in the dish and set it in
19 the oven for a period of time, and then, I believe, it
20 was meas -- in fact, if I recall correctly, it was
21 based on weight, weight of the pro -- of the tobacco
22 beforehand. We'd put it in the -- in an oven sort of
23 apparatus and then weigh it after-hand. I can't
24 recall exactly how, how their equipment worked, but I
25 just would record the various measurements.

45

1 Q. What did you do prior to working at
2 Brown & Williamson?

3 A. I was in college full time in
4 1970 -- in the fall of '72, and had a couple of just
5 part-time jobs.

6 Q. What type of degree did you get
7 from -- well, you went to University of Louisville; is
8 that right?
9 A. That's correct.
10 Q. And when did you graduate?
11 A. 1981.
12 Q. And you started in 1972?
13 A. Yes, I ended up going part time
14 after awhile, going at night.
15 Q. And what degree did you obtain from,
16 from the University of Louisville?
17 A. A Bachelor of Science Degree.
18 Q. In marketing?
19 A. Yes.
20 Q. Did you graduate with any, any
21 honors?
22 A. Yes, I had high honors in marketing.
23 Q. So would that consist of a
24 particular GPA; is that how it works?
25 A. Yes, I believe it had to be a 3.5 or
46

1 higher.
2 Q. Any other types of honors that you
3 graduated with?
4 A. Not from the University of
5 Louisville, no.
6 Q. From another university?
7 A. No, from high school, but not from
8 the university.
9 Q. I see. And then you also obtained
10 an MBA; is that correct?
11 A. That's correct.
12 Q. From Bellarmine College?
13 A. Bellarmine College.
14 Q. Bellarmine. B-e-l-l-a-r-m-i-n-e?
15 A. That's correct.
16 Q. And you obtained that in 1984;
17 correct?
18 A. Yes.
19 Q. With regard to your MBA, did you
20 have a particular focus in terms of what you studied?
21 A. No, they didn't have a focus at
22 Bellarmine when I went there.
23 Q. Do you consider yourself an expert
24 in marketing, or just somebody with specialized
25 knowledge in the area?

47

1 MR. ERNY: Object to the form.
2 A. I'm not sure what you mean by an
3 expert.
4 Q. Do you know what an expert is?
5 A. Yes, but I know the word is pretty
6 broadly used.
7 Q. Do you consider yourself someone --
8 somebody with particular specialized knowledge in the
9 area of marketing?
10 MR. ERNY: Object to the form.
11 A. I would consider that I'm pretty
12 knowledgeable about marketing.
13 Q. Have you ever published any articles
14 on marketing?
15 A. No, I have not.
16 Q. Have you ever published any articles

17 on the particular area of advertising?
18 A. No, I have not.
19 Q. Have you any -- have you ever
20 published any articles, whatsoever?
21 A. No, I have not.
22 Q. Have you ever had any courses on the
23 topic of ethics as it relates to marketing?
24 A. I have had courses on business
25 ethics, but not specifically marketing.

48

1 Q. Do the courses on business ethics
2 cover subjects such as advertising?
3 A. I don't recall what all they
4 covered, but they covered business in general.
5 Q. And was in that -- was that in the
6 context of working at Brown & Williamson, or in the
7 context of going to school?
8 A. In the context of going to school.
9 Q. Do you believe that somebody who
10 markets, advertises and sells a product has any type
11 of ethical obligations to the consumer?
12 MR. ERNY: Objection.
13 A. I don't understand the nature of
14 your question.
15 Q. What part don't you understand?
16 A. Could you repeat it, please?
17 Q. Sure. Do you believe that somebody
18 who markets, advertises and sells a product has
19 particular ethical obligations to a consumer?
20 MR. ERNY: Objection.
21 A. I'm afraid I still don't understand
22 your question in terms of particular ethical
23 obligations to a consumer. What do you mean by that?
24 Q. I'm at a loss for how to say that
25 more clearly, 'cause it seems, from, from, from my

49

1 perspective it seems pretty clear. Do you think that
2 a seller of a product has certain ethical obligations?
3 MR. ERNY: I'm going to object.
4 She's already told you she doesn't understand it. It
5 may be clear to you, but it is not clear to her.
6 Q. You can answer.
7 A. I'm afraid I still don't understand
8 the question.
9 Q. Do you know what an ethical
10 obligation is?
11 A. I know what I would interpret as an
12 ethical obligation, yes.
13 Q. And how would you interpret it?
14 A. I would interpret it as a company
15 has ethical obligations to the community, for
16 instance, for not polluting the community, things like
17 that.
18 Q. How about in terms of certain
19 responsibilities or ethical responsibilities to the
20 consumer of a product that the company makes?
21 MR. ERNY: Objection.
22 A. Again, I'm afraid I don't understand
23 what, what you mean by your question.
24 Q. Do you think that a company has a
25 duty not to, for example, falsely advertise --

50

1 MR. ERNY: Object to --

2 Q. -- a product?
3 MR. ERNY: I'm sorry. Object to the
4 form.
5 A. Could you repeat the question,
6 please?
7 Q. Do you think that a company has a
8 particular responsibility not to falsely advertise
9 their product?
10 A. I believe all companies have
11 responsibilities to not falsely advertise.
12 Q. Would you consider that to be an
13 ethical responsibility?
14 MR. ERNY: Objection.
15 A. I believe it's a legal
16 responsibility as well.
17 Q. So then that would also include an
18 ethical responsibility?
19 MR. ERNY: Objection.
20 A. I would say that it's a legal
21 responsibility.
22 Q. But not an ethical responsibility?
23 MR. ERNY: Objection.
24 A. I'm afraid I don't understand your
25 question, still.

51

1 Q. You studied ethics; right?
2 A. That is correct?
3 Q. Business ethics; correct?
4 A. Yes.
5 Q. What did that encompass?
6 A. That encompassed the importance of a
7 business primarily to give back to the community, to,
8 to employ people, to treat its employees fairly, et
9 cetera; to not pollute, as I mentioned.
10 Q. Did it discuss any responsibilities
11 that a business has to a person who purchases the
12 products that they make, if they make a product?
13 A. I don't recall any discussion of
14 that in these courses.
15 Q. Do you believe that a company has a
16 particular responsibility to its consumers with regard
17 to the product it makes?
18 MR. ERNY: Objection.
19 A. I believe a company has a
20 responsibility to market its product in a legal
21 manner.
22 Q. Any other responsibilities that a
23 company has to the purchaser of a product?
24 A. Not any that I can think of at the
25 moment that I can articulate.

52

1 Q. Have you ever heard of an ethical
2 theory, a business ethics theory called the
3 stakeholder theory?
4 A. I haven't heard of it in terms of a
5 stakeholder theory. I am familiar with stakeholders.
6 Q. What's a stakeholder --
7 A. From my --
8 Q. -- as you understand it?
9 A. From my understanding, a stakeholder
10 is anyone who has a stake in the success of a company.
11 Q. Would that include the consumer?
12 A. Not in my definition, it would not.

13 Q. In the context of your business
14 ethics courses, did you ever cover subjects involving
15 stakeholders?
16 A. Yes, we did.
17 Q. And in the courses that you studied
18 or in the courses that you took, did the definition of
19 stakeholder ever encompass the consumer of a product?
20 A. I don't recall it encompassing
21 consumers.
22 Q. Are there any other types of
23 obligations that a marketer or a seller of a product
24 has to its consumer, other than to act in a legal way?
25 A. I can't think of any offhand.

53

1 Q. In your opinion, is it ethical for a
2 seller of a product to make represent -- to make
3 representations about their product which are false?
4 MR. ERNY: Objection.
5 A. Could you repeat it, please?
6 Q. Sure. In your opinion, is it
7 ethical for a seller of a product to make
8 representations about their products which are false?
9 MR. ERNY: Objection.
10 A. I'm sorry. I don't understand the
11 question. Could you please restate it somehow for me?
12 Q. Which part don't you understand?
13 A. To make representations, I don't
14 understand what you mean by that. Could you be more
15 specific?
16 Q. Sure. In your opinion, is it
17 ethical for a seller of a product, product, to say
18 something about their product, for example, in an
19 advertisement, which is false?
20 MR. ERNY: Objection.
21 A. It is not only unethical, it's un --
22 it's illegal.
23 Q. So then that's a, that's a yes that
24 it's unethical?
25 A. I would -- again repeat that. I --

54

1 it's an illegal thing to state something false in an
2 advertisement.
3 Q. But not necessarily unethical?
4 MR. ERNY: Objection.
5 A. Well, in my definition of unethical,
6 it's unethical to do anything illegal, and that would
7 be illegal.
8 Q. Is it your opinion that if a company
9 behaves legally, then at all times it will be acting
10 ethically?
11 MR. ERNY: Objection.
12 A. I don't quite know how to respond to
13 that question because I don't think I understand your
14 question.
15 Q. Can you envision any scenarios where
16 a company acts legally, but is acting unethically?
17 MR. ERNY: Objection.
18 A. Not specifically, I can't think of
19 any.
20 Q. We can agree, though, that
21 advertising should not be deceptive?
22 A. I agree that advertising should not
23 be deceptive.

24 Q. All right, maybe, maybe if I give
25 you a thought -- let me, let me see if I can get a
55

1 sense of your opinion regarding general marketing
2 practices as it pertains to this line of questioning.
3 Suppose an individual seller markets
4 Vitamin X to cure headaches, okay, and the seller
5 knowingly and falsely states something along the lines
6 that the tests show that Vitamin X is ten times more
7 effective in relieving headaches than Tylenol, and the
8 seller knows that to be false and, and, and markets
9 the product that way anyway. Would you consider that
10 to be deceptive advertising?
11 MR. ERNY: I'm going to object to
12 the form and, and also hypothetical facts aren't in
13 evidence.
14 Q. You can answer.
15 A. I would say in that example, that
16 that would be an example of false advertising and that
17 would be illegal.
18 Q. Okay, and my question was, is it
19 deceptive advertising, and I take it false and illegal
20 is deceptive?
21 A. I define deceptive as false.
22 Q. Would you consider that type of
23 advertisement to be unethical?
24 MR. ERNY: Objection.
25 A. Again, as I stated, I would consider
56

1 that illegal, and to me to do anything illegal is to
2 do inethic (sic) -- is unethical.
3 Q. In your opinion, is it ethical to
4 make unsupported representations in an advertisement?
5 MR. ERNY: Object to the form.
6 A. Can you explain to me what you mean
7 by unsupported representation?
8 Q. Sure. For example, use the same
9 example, seller states that Vitamin X cures headaches,
10 and has no basis for saying that Vitamin X cures
11 headaches?
12 MR. ERNY: Object to the form.
13 A. In my -- if I'm understanding your
14 quesh -- question correctly, if they have no
15 substantiation to that and it is false, then that is
16 illegal. If they had the substantiation and just
17 don't state that they have the substantiation, then I
18 would not consider that false or deceptive.
19 Q. Suppose they don't have the
20 substantiation, but don't know where or not it's false
21 or true?
22 MR. ERNY: Objection.
23 A. I'm not sure of the legalities
24 involved in that.
25 Q. How about the ethics?
57

1 MR. ERNY: Objection.
2 A. Again, I would state if it were
3 illegal, which I'm not sure if that is illegal,
4 illegal or not because I'm not a lawyer, but if that
5 were illegal, I would say that is unethical.
6 Q. How about if it was legal to do it,
7 would it still be ethical?
8 MR. ERNY: Objection.

9 Q. In -- as you understand the term
10 ethics?
11 A. Again, in my definition, if it's
12 illegal it's unethical. It's not necessarily -- if
13 it's illegal, then I don't requate it to being
14 unethical.
15 Q. Suppose there's no law that
16 specifically prohibits it. Under your definition of
17 ethical, would it be ethical to make an unsupported
18 representation, such as Vitamin X cures headaches,
19 without knowing whether or not that's true?
20 MR. ERNY: Objection.
21 A. And your question was again? I'm
22 sorry.
23 Q. Would it be ethical to make that
24 kind of statement?
25 MR. ERNY: Same objection.

58

1 A. Again, I would -- I equate ethical
2 with legal, and in my opinion I don't know if that is
3 legal or illegal, so I don't think I can respond to
4 that question.
5 Q. If it's legal to do it, then it's
6 ethical to do it; is that right?
7 MR. ERNY: Objection.
8 A. In that particular example you gave
9 me, I would say that if it were legal, then I would
10 see that as being ethical.
11 Q. Or stated slightly different, if
12 it's not illegal, then it's ethical?
13 MR. ERNY: Objection.
14 A. I don't state that that way.
15 Q. Then let me ask you that question.
16 If it's not illegal, is it ethical?
17 MR. ERNY: Objection.
18 A. Again, I don't know how to respond
19 to that question because I equate if it is legal it's
20 ethical. I don't equate ethical and unethical with
21 things that are not associated with legal.
22 Q. So just to clarify, then if it's not
23 illegal it's ethical?
24 MR. ERNY: Objection; asked and
25 answered.

59

1 A. Again, I would say, as I said, I
2 equate ethical with legal, and if it is legal, I see
3 it as ethical.
4 Q. In your opinion, is it ethical for
5 an individual to state something that is true in an
6 advertisement, but leave out important facts about a
7 product that would be material to a consumer's
8 decision to purchase the product?
9 MR. ERNY: Objection.
10 A. That's a long question. I'm sorry.
11 Could you say that again?
12 Q. Sure. Is it ethical for an
13 individual to state, to state something that's true
14 about a product, but leave out information that's
15 material to a consumer's decision to purchase the
16 product?
17 MR. ERNY: Objection.
18 A. As -- responding to that question as
19 an individual, I'm not sure I would know what

20 information was material to another individual. So if
21 I were relating something to you as another
22 individual, I wouldn't know what information to
23 include because I wouldn't know what all was material
24 to you.

25 Q. Okay, let me -- let's try an

60

1 example. Use the vitamin example. Suppose the
2 seller of vitamins says this vitamin cures or relieves
3 headaches, and that's true, and he markets the drug as
4 relieving headaches, but the seller also knows that
5 the vitamin induces strokes, but doesn't -- but leaves
6 that information out. Would you consider that to be
7 an ethical marketing practice?

8 MR. ERNY: Objection.

9 A. In that specific example you gave
10 me, no, I would not consider that to be ethical.

11 Q. And why is that?

12 A. Because there is information that is
13 material to that specific example that was omitted.

14 Q. In your opinion, is it ethical to
15 state something in an advertisement if it has a
16 tendency to mislead?

17 MR. ERNY: Objection.

18 A. In my opinion, it is difficult to
19 know what one per -- what misleads one person from
20 another person.

21 Q. Suppose you do focus groups, and
22 based on your focus groups you know that the responses
23 indicate that, let's say, thirty percent of the
24 consumers perceive one thing about the product, which
25 you know not to be true. In that scenario, would it

61

1 ethi -- would it be then ethical to use that
2 advertisement as part as your mark -- as part of your
3 marketing practice?

4 MR. ERNY: Objection.

5 A. I'm afraid I'm confused by your
6 question.

7 Q. What part are you confused by?

8 A. When you talk about consumers,
9 thirty percent of consumers being -- seeing the one
10 perception, I don't understand what you mean by that.
11 Could you give me another example or be more specific
12 about that?

13 Q. Sure. The original question was, is
14 it ethical to state something in an advertisement that
15 has a tendency to mislead?

16 A. Uh-huh.

17 Q. And your response is what?

18 MR. ERNY: Objection. She said she
19 didn't understand that question. You're just asking
20 it again.

21 A. My response was that I don't
22 understand what you mean by a tendency to mislead,
23 because what's misleading to one person may not be
24 misleading to another person.

25 Q. Okay. And then I understood that,

62

1 and then I asked the follow-up question. The
2 follow-up question was, suppose you do some type of
3 consumer test on a particular advertisement and you
4 notice that a percentage of the test group, say thirty

5 percent, for example, perceives something about the
6 product as a result of the advertising that's not
7 correct; would it be ethical then to use that
8 advertisement as part of your marketing campaign?
9 MR. ERNY: Objection.
10 A. I would say it depends on what the
11 perceptions are about.
12 Q. For example?
13 A. For example, if I did research in my
14 current position on Lucky Strike and thirty percent of
15 the consumers still perceive Lucky Strike to be old
16 and non-filtered, but seventy percent of those
17 consumers perceive Lucky Strike to be -- have a
18 filter, it doesn't mean I would not run that
19 advertising, even though thirty percent had an
20 incorrect perception that Lucky Strike doesn't have a
21 filter.
22 Q. Okay. Suppose -- using the
23 cigarette example, suppose you're doing testing on a
24 particular ad for a particular cigarette and you
25 notice that thirty percent of the people for this ad,

63

1 as a result of this ad, perceive this type of
2 cigarette as being safer than another type of
3 cigarette, and you have no evidence to support that
4 particular inference, would it be unethical then to
5 use that ad as part of the marketing practice for that
6 particular cigarette?

7 MR. ERNY: Objection.
8 A. Your example is not relevant to me
9 because we don't research consumers on their
10 perception of the safety of a cigarette.
11 Q. Suppose, for example, a company did,
12 and got those particular results, would it be ethical,
13 in your opinion, to then use that ad as part of the
14 marketing campaign?

15 MR. ERNY: Objection.
16 A. Again, you're giving me such a
17 hypothetical example that I can't relate to. Can you
18 give me an example that I can relate to?

19 Q. I'd like to use this particular
20 example, just to get a sense of what your mar-- what
21 your opinions are regarding marketing.

22 MR. ERNY: I'm going to object. She
23 said using this example she can't answer that
24 question.

25 MR. BERNEY: I don't think she said

64

1 she can't answer that question.

2 A. I said I can't relate to the example
3 you gave. Could you ask the question again, please?

4 Q. Sure. I'm going to use the same
5 example. Tell me if there are any particular areas
6 that you need clarification in order to answer this
7 particular question. Advertisement is for a
8 particular cigarette. You test the advertisement; you
9 notice -- or the company that's testing the particular
10 advertisement notices that thirty percent of the
11 people involved in the test perceive this particular
12 cigarette, based on the advertisement, as being safer
13 than other types of cigarettes. The question is, as a
14 result, would it be ethical to run that advertisement
15 as part of the marketing campaign for that particular

16 brand cigarette?
17 MR. ERNY: I'm going to object.
18 A. Again, your example is totally
19 irrelevant to me, because we do not do -- in my tenure
20 at Brown & Williamson, we have not done research of
21 consumers where we ask the question or had anyone
22 comment about safety of cigarettes.
23 Q. I'm not asking about any of the work
24 that Brown & Williamson has done. I can certainly
25 appreciate what you're saying with regard to that.

65

1 I'm just talking generally.
2 MR. ERNY: I'm going to object
3 because she doesn't have a background on which to give
4 an opinion. She's already told you that. She's told
5 you that twice. If you can give her a better example
6 and ask the question, that's fine, but if you keep
7 sticking to the same questions and the same
8 hypothetical, the answer's going to be the same. I
9 ask you to move on.
10 Q. You -- you've taken courses in
11 business ethics; correct?
12 A. That is correct.
13 Q. And you have a background in
14 marketing; correct?
15 A. Yes, I do.
16 Q. In fact, you have an MBA in
17 marketing; correct?
18 A. I have an MBA. It is just not
19 specialized.
20 Q. You covered marketing courses as
21 a -- in the context of your MBA; correct?
22 A. That's correct.
23 Q. And you've been in the field of
24 marketing now for close to twenty-five years; correct?
25 A. That's true.

66

1 Q. Bringing all of your background of
2 marketing to bear in terms of this question, can you
3 answer the question?
4 MR. ERNY: I'm going to object.
5 She's already told you using the hypothetical that
6 you've given her, that she cannot.
7 A. Again, I would say I cannot relate
8 to the example you've given me. I'd be happy to
9 answer the question if you could give me an example to
10 which I can relate.
11 Q. Suppose -- going back to the Vitamin
12 X example, since you were, you were able to answer
13 questions regarding that. Suppose the advertisement
14 states that Vitamin X is the most effective treatment
15 for curing headaches. Okay. What type of research
16 does the seller need to do in order to -- in order to
17 back up that particular statement?
18 MR. ERNY: Objection.
19 A. The advertisement stated that
20 Vitamin X was the most effective vitamin for curing
21 headaches. Was that your example?
22 Q. Yes.
23 A. Then, in my opinion, the advertiser
24 would have to have tested Vitamin X against other
25 brands to make that claim.

67

1 Q. Okay. Similar type of question.
2 Suppose the seller is saying Vitamin X cures
3 headaches. What type of research would the seller
4 have to do in order to support that statement?
5 A. I don't know specifically. I would
6 have to defer that -- if I were the advertiser on that
7 case, I would have to talk with my law department and
8 the scientists involved to determine what sort of
9 substantiation is required on that.
10 Q. From an -- from an ethical point of
11 view, what type of research would a person need in
12 order to substantiate that kind of --
13 MR. ERNY: Objection.
14 Q. -- thing in order to make it an
15 ethical representation?
16 MR. ERNY: I'm sorry. Objection.
17 A. Again, as I stated before, I equate
18 ethical with legal, and in order to respond to that
19 question I don't have the legal background to know
20 what sort of substantiation is required for that
21 advertisement, so I would have to defer to my law
22 department and, and talk with them about that.
23 Q. Suppose someone -- suppose a seller
24 is selling a drug to relieve headaches, would you
25 personally want to know whether or not that drug might

68

1 cause addiction?
2 MR. ERNY: Objection.
3 A. Could you define addiction for me,
4 please?
5 Q. Sure. Let me -- let me restate it.
6 Suppose somebody was selling a drug to relieve
7 headaches, would you want to know whether or not
8 that -- whether or not that drug might induce some
9 type of dependency?
10 MR. ERNY: Objection.
11 A. Again, some type of dependency to me
12 is a little vague, because my interpretation of what
13 that means may be different than yours.
14 Q. What do you understand it to mean?
15 A. Okay, when you talk about some type
16 of dependency, I equate that to mean some sort of
17 on -- I equate that to be heroin or, or cocaine, for
18 example, and so if I took that particular drug for --
19 to relieve my headache, I would not be able to quit;
20 that I would be constantly needing that drug to
21 function normally in society, and I would certainly
22 want to know that, if that were the case.
23 Q. How about if it wasn't to the point
24 of not being able to quit, but it could be very
25 difficult to quit as a result of taking that

69

1 particular drug, --
2 MR. ERNY: Objection.
3 Q. -- would you want to know that
4 information?
5 MR. ERNY: Objection.
6 A. Could you state the full question
7 again? I'm sorry.
8 Q. Sure. Suppose somebody is selling a
9 drug to relieve headaches, would you want to know
10 whether or not after taking that drug it might be
11 difficult to stop taking that drug?

12 MR. ERNY: Objection.
13 A. I would say it would depend on how
14 difficult you mean. Some things are difficult to stop
15 doing. I would not necessarily be concerned about
16 that. Again, unless it was something where I would be
17 severely limited from quitting taking that drug, then
18 I would be concerned and would want to know about
19 that.
20 Q. What do you understand the term
21 addiction to, to mean?
22 A. In my understanding addiction has
23 broad, broad meanings, and people interpret it very
24 differently.
25 Q. Like what, for example?

70

1 A. Oh, in some cases the term addiction
2 is used to describe things, again, like heroin or
3 cocaine, things that are intoxicating, things that
4 impair your ability to function normally and from
5 which substantial intervention is required to stop
6 versus a more loose definition of addiction, which in
7 some cases it means it may be difficult to stop or,
8 you know, habit forming. For instance, sometimes I
9 loosely use the term I'm addicted to Diet Coke.
10 Q. You use the term habit forming,
11 correct --
12 A. Yes.
13 Q. -- as part of your definition, as
14 part of a definition of addiction; correct?
15 A. Yes, I do.
16 Q. Suppose somebody is selling a drug
17 to relieve headaches, would you want to know whether
18 or not the drug is, quote, unquote, "habit forming"?
19 MR. ERNY: Objection.
20 A. Not necessarily in the definition
21 that I gave you. For example -- the example I gave
22 you with Diet Coke, I didn't need to know that I --
23 that Diet Coke is habit forming for me. I drink Diet
24 Coke because I enjoy drinking Diet Coke and I choose
25 to continue to drink Diet Coke, even though I know

71

1 it's not, quote, "addictive" in terms of the way hard
2 drugs can be addictive, but do I need for the
3 Coca-Cola Company to tell me that Diet Coke is habit
4 forming? No.
5 Q. If Diet Coke caused fifty percent of
6 people to die prematurely and it was difficult to give
7 up Diet Coke because of something it did to your
8 brain, in terms of producing particular physiological
9 or pharmacological effects in your brain, would you
10 want the makers of Diet Coke to tell you that it may
11 be difficult to stop drinking it if you start?
12 MR. ERNY: Object to the form and as
13 to the basis of the hypothetical.
14 A. Could you state it again, please?
15 MR. BERNEY: Could you read it back,
16 please?
17 (Whereupon, question number 5, page
18 71, was read aloud by the court reporter.)
19 MR. ERNY: I object to that.
20 A. In the example you gave, if the
21 Coca-Cola Company had information, or there was public
22 information regarding that fifty percent of the people

23 who drink Diet Coke die, I would want to know that
24 information. I would then make my own decision as to
25 whether or not to continue to drink Diet Coke. The

72

1 fact that it may be difficult to quit is not something
2 I would need them to tell me, as long as there wasn't
3 any physiological reason that would prohibit me from
4 quitting if I should so choose to, to quit.

5 Q. Going back to the Vitamin X example.
6 Suppose the Vitamin X example does produce
7 physiological effects which make difficult to quit,
8 would you want to know that information?

9 MR. ERNY: I'm going to object.

10 A. Again, when you say difficult to
11 quit, to me, if it's just -- a lot of things are
12 difficult to do. If it's just difficult to quit, but
13 it's not impossible to quit, or it's not something
14 that I know that a lot of people are able to do quite
15 successfully, then I would not need that information.

16 Q. Suppose a seller sells a product and
17 puts particular stuff into the product to make it
18 addictive without the -- without disclosing that to
19 the consumer, would you consider that to be unethical?

20 MR. ERNY: Objection.

21 A. Again, I'm not sure which definition
22 of addictive you were using.

23 Q. Let's use the definition that talks
24 about needing intervention to stop.

25 A. So you're then using the definition

73

1 I gave previously of, for instance, the heroin or
2 cocaine, which it does intoxicate the person and they
3 can't function normally and they do need intervention
4 to stop; is that correct?

5 Q. Yes.

6 A. And then you're -- I'm sorry to
7 again ask you to repeat the question, but I --

8 Q. Sure. Suppose an individual sells a
9 product and puts particular stuff into the product
10 that makes it addictive, would you consider that to be
11 unethical?

12 MR. ERNY: Objection.

13 A. I would consider that to be illegal
14 and then, of course, unethical.

15 Q. Would you consider that to be highly
16 unethical?

17 MR. ERNY: Objection.

18 A. I don't know that I have degrees of
19 unethical. Again, I equate eth -- unethical with
20 illegal, and in that example, if someone is doing
21 that, in my opinion, they're doing hard drugs in
22 something, and that is illegal, so that is unethical,
23 in my opinion.

24 Q. What, what were three components to
25 your definition of addiction? I know there is

74

1 intoxication and I know there was intervention in
2 order to quit, but I think there was a second one.

3 A. The def -- the definition that I
4 gave under that was intoxication, unable to perform
5 your normal activities, and requiring intervention to
6 quit.

7 Q. And what do you understand

8 intoxication to mean in that context?
9 A. I use that similar to someone being
10 intoxicated by alcohol. It's a visible sort of effect
11 on people.

12 Q. Okay. Suppose an individual sells a
13 product and, and purposely puts stuff into the product
14 to make it very hard to quit without intervention,
15 would you consider that to be unethical?

16 MR. ERNY: Objection.

17 A. I'm not sure what, what you mean by
18 very hard to quit without intervention. Are you
19 equating that to my previous example of heroin and
20 cocaine?

21 Q. Well, I'm just removing the
22 intoxication part and the unable to perform part.

23 A. Again, if you -- if what you mean by
24 that is requiring intervention along the lines of
25 cocaine or heroin in order to quit -- and again, I'm

75

1 sorry. Could you repeat the question specifically?

2 Q. Okay, let's use intervention to quit
3 along the lines of cocaine, for example.

4 A. Okay.

5 Q. Okay. Suppose an individual sells a
6 product and purposely puts stuff into the product so
7 that, so that it makes it difficult for the person to
8 quit without intervention, like a person might need
9 intervention in the context of cocaine, would you
10 consider that to be unethical?

11 MR. ERNY: Objection.

12 A. I would consider that to be illegal
13 and then unethical.

14 Q. Do you think that somebody who
15 markets cigarettes has a partic -- has any particular
16 ethical responsibilities to the consumer?

17 MR. ERNY: Objection.

18 A. I believe that marketing cigarettes
19 we have an obligation to be completely legal and in
20 being legal, to me that, again, equates to being
21 ethical.

22 Q. Suppose there's no law that says you
23 can't market cigarettes to a, to a child, so that it
24 would be legal to market cigarettes to a child, would
25 you consider that to be ethical?

76

1 MR. ERNY: Objection.

2 A. Could you define child?

3 Q. Sure. Let's say somebody under the
4 age of sixteen.

5 A. Well, first of all, that would be
6 illegal, so consequently ill -- unethical.

7 Q. Suppose it's not illegal; suppose
8 there's no law that prohibits it?

9 MR. ERNY: I'm going to object.

10 A. Again, I don't understand the
11 question.

12 Q. Okay. The question is, suppose
13 there's no law that prohibits marketing cigarettes to
14 children under the age of sixteen. Would it be
15 ethical to market cigarettes to children under the age
16 of sixteen in that context?

17 MR. ERNY: Objection.

18 A. In that context I would say no.

19 Q. Okay, the same question for, let's
20 say, a twelve-year-old. Suppose it's not illegal to
21 market cigarettes to a twelve-year-old; therefore, it
22 would also be ethical to market those cigarettes to a
23 twelve-year-old?

24 MR. ERNY: I object.

25 A. Well, in response to that, first of
77

1 all, it is illegal to market cigarettes to a
2 twelve-year-old. It is also unethical to market
3 cigarettes to a twelve-year-old.

4 Q. Suppose there's no law that
5 prohibits it. Would it be unethical to market
6 cigarettes to a twelve-year-old?

7 MR. ERNY: Objection.

8 A. In my opinion, it would be unethical
9 to market cigarettes to anyone under the age of -- the
10 legal age of purchasing cigarettes.

11 Q. And if there is no legal age?

12 MR. ERNY: Objection.

13 A. But there is a legal age.

14 Q. And if there wasn't?

15 MR. ERNY: Asked and answered.

16 Objection.

17 A. Could you ask the question again,
18 please?

19 Q. Sure. Actually I'm, I'm going to
20 withdraw it.

21 Are you familiar with the Cigarette
22 Advertising Code?

23 A. Yes, I am.

24 Q. What's your understanding of how it
25 came into being?

78

1 A. I don't know all the specifics of
2 how it came into being. I know it was an agreement
3 that Brown & Williamson voluntarily entered into with
4 other tobacco manufacturers.

5 THE COURT REPORTER: Just a second.

6 MR. BERNEY: Sure.

7 (Whereupon, a short pause was
8 taken.)

9 MR. BERNEY: Could you read back her
10 answer?

11 (Whereupon, answer number 1, page
12 78, was read aloud by the court reporter.)

13 Q. Do you know when it came into being?

14 A. I believe it was in the 1960s.

15 Q. Can you be more specific?

16 A. I don't know the specific year.

17 Q. Early 60s, mid-'60s, late '60s?

18 A. I don't recall.

19 Q. Okay. My understanding is that it
20 came, it came into being in '64 or '63. Do you know
21 if that's right?

22 A. I don't recall when.

23 Q. Do you know if it came in -- do you
24 know if it -- if its issuance coincided with the
25 release of the 1964 Surgeon General's report?

79

1 A. I don't know.

2 Q. Do you know why it was created?

3 A. I'm not sure why it was created, no.

4 Q. Have you ever done any research as
5 to why it was created?
6 A. No, not that I'm aware of.
7 Q. Have you ever asked anyone?
8 A. No, I haven't.
9 Q. Do you know what other manufacturers
10 entered into this particular agreement?
11 A. No, I don't know which ones
12 specifically.
13 Q. Do you know if American Tobacco
14 Company or American Brands entered into the agreement?
15 MR. ERNY: Objection.
16 A. I don't know.
17 Q. Do you know whether or not Brown &
18 Williamson has continuously complied with the
19 Cigarette Advertising Code since it was -- since it
20 came into being?
21 A. Yes, we have.
22 Q. And is this something that Brown &
23 Williamson strives to do to comply with the Cigarette
24 Advertising Code?
25 A. Absolutely. In fact, Brown &

80

1 Williamson goes beyond what was in the Cigarette
2 Advertising Code and it self-imposes additional
3 restrictions on the marketing of our products.
4 Q. Like what?
5 A. For example, Brown & Williamson does
6 not market any of our products to any smokers under
7 the age of twenty-one. In addition, we've
8 self-imposed model ages to be thirty or older. Those
9 are the two specific things I can think of.
10 Q. And when did Brown & Williamson come
11 up with these additional rules or standards?
12 A. To my knowledge, Brown & Williamson
13 has always had the standard of not marketing our
14 products to any smoker under the age of twenty-one.
15 The, the additional regulation on model ages came
16 about more recently. It was during the time period
17 that I was in creative services. So it was sometime
18 between 1996 and 1999.
19 Q. Do you know why it came up with that
20 additional standard?
21 A. Of the model ages --
22 Q. Uh-huh.
23 A. -- being thirty? We came up with
24 that to avoid any confusion by anyone that our
25 cigarettes are marketed to smokers twenty-one and

81

1 older. Where the industry standard was modeled had to
2 be twenty-five or older. Brown & Williamson didn't
3 want any confusion by models who were actually
4 twenty-five, perhaps looking younger than that, so we
5 built in a buffer and said our models had to be at
6 least thirty. So they looked at least twenty-five or
7 older, so that there was no confusion that we marketed
8 to anyone underage.
9 Q. Do you know -- do you know whether
10 or not that requirement for that standard was imposed
11 by Brown & Williamson or self-imposed by Brown &
12 Williamson due to any type of litigation concerns?
13 A. Not to my knowledge.
14 MR. ERNY: Mr. Berney, we've been

15 going about an hour now. Can we take another short
16 break?
17 MR. BERNEY: Sure.
18 (Whereupon, a short recess was
19 taken.)
20 THE VIDEOGRAPHER: Back on the
21 record.
22 (Whereupon, the hereinbelow referred
23 to document was marked Plaintiffs' Exhibit Number 3,
24 and attached hereto.)
25 Q. I'm showing you what's now been
82
1 marked as Plaintiffs' Exhibit 3. It's labeled
2 Cigarette Advertising Code.
3 MR. ERNY: Mr. Berney, may I have a
4 copy, please?
5 MR. BERNEY: Sure.
6 (The document is handed to counsel.)
7 MR. ERNY: Thank you.
8 MR. BERNEY: Yep.
9 Q. (By Mr. Berney) And why don't you
10 take a moment just to look through it.
11 (The document is handed to the
12 witness for review.)
13 A. Okay.
14 Q. Have you ever seen this document or
15 something similar to this document?
16 A. I've never seen this particular
17 document, but I am familiar with the Cigarette
18 Advertising Code.
19 Q. Have you actually seen a document
20 that purports to be the Cigarette Advertising Code?
21 A. No, I have not.
22 Q. Then how are you familiar with the
23 various provisions of the Cigarette Advertising Code?
24 A. From our corporate Web site it
25 speaks specifically to Cigarette Advertising Code and
83
1 as well as additional advertising restrictions that
2 Brown & Williamson has. I also, in my early days in
3 the marketing department, had discussions with our
4 Brown & Williamson lawyers regarding the Cigarette
5 Advertising Code.
6 Q. Do you remember which lawyers?
7 A. I believe at that time it was Bart
8 Freedman.
9 Q. Anyone else?
10 A. Not that I recall.
11 Q. And do you know if Mr. Freedman is
12 still with Brown & Williamson?
13 A. Yes, he is.
14 Q. And have you discussed the
15 Advertising Code with other Brown & Williamson
16 employees or any of the provisions of the Cigarette
17 Advertising Codes with any employees at Brown &
18 Williamson?
19 A. Not specifically. Certainly there
20 are discussions within the marketing department in
21 terms of our restrictions regarding advertising.
22 Q. Could you turn to page 4?
23 (Whereupon, the witness complies
24 with the request.)
25 Q. And it talks about advertising

1 standards. Do you see that under Article IV?
 2 A. Yes, I do.
 3 Q. In Section 1-a it says, "All
 4 cigarette advertising and promotional activity shall
 5 be subject to the following:" Then it goes on to
 6 state, "Cigarette advertising shall not appear on
 7 television and radio programs, or in --" publigate --
 8 "or in publications, directed primarily to persons
 9 under twenty-one years of age." Do you see that?
 10 A. Yes, I do.
 11 Q. And did I read that correctly?
 12 A. Yes.
 13 Q. Do you think that's an appropriate
 14 standard to have?
 15 MR. ERNY: Objection.
 16 A. I don't evaluate whether it's
 17 appropriate or inappropriate. It is a standard that
 18 we follow.
 19 Q. Do you think it's a good standard?
 20 MR. ERNY: Objection.
 21 A. I don't know how to judge a standard
 22 in terms of good or not good. It just is a standard
 23 that we've adopted and continued to abide by.
 24 Q. Do you know why?
 25 A. Because it was part of the Cigarette

85

1 Advertising Code.
 2 Q. Any other particular reason why?
 3 A. Not to my knowledge. I don't know.
 4 Q. The same page, Section 1-a -- I'm
 5 sorry. Section 1-d. It says that "Cigarette
 6 advertising shall not represent that cigarette smoking
 7 is essential to social prominence, distinction,
 8 success, or sexual attraction." Did I read that
 9 correctly?
 10 A. Yes.
 11 Q. Do you think that's a, a good
 12 standard to have?
 13 MR. ERNY: Objection.
 14 A. Again, I don't judge our standards
 15 as being good or not good. They just are our
 16 standards that we abide by.
 17 Q. In terms of your own personal
 18 opinion, do you think it's a good standard?
 19 MR. ERNY: Objection.
 20 A. Again, I have no opinion, and to me
 21 these are just standards that we follow.
 22 Q. Could you turn the page, please.
 23 (Whereupon, the witness complies
 24 with the request.)
 25 Q. We're now on page 5, and Listing h.

86

1 It says, "Cigarette advertising shall not depict as a
 2 smoker any person well known as being, or having been,
 3 an athlete." Did I read that correctly?
 4 A. Yes.
 5 Q. Do you think that's an appropriate
 6 standard to have?
 7 MR. ERNY: Objection.
 8 A. Again, I would respond the same way.
 9 I don't view standards as appropriate or
 10 inappropriate. They are our standards and we abide by

11 them.
12 Q. Do you think it's a good standard to
13 have?
14 MR. ERNY: Objection.
15 A. Again, I don't see standards as good
16 or bad. I just see them as standards.
17 Q. Do you know -- do you know any basis
18 or, or reason for having that as a particular
19 standard?
20 A. I'm not familiar with why they chose
21 it as a standard.
22 Q. Sitting here today, can, can you
23 imagine any particular reason?
24 MR. ERNY: Objection.
25 Q. You can answer.

87

1 A. I don't know the reason they use
2 this.
3 Q. You can't even imagine a reason?
4 MR. ERNY: Objection; asked and
5 answered. She said no.
6 Q. Did, did you say no?
7 A. I said I can't imagine it. I don't
8 know any reason they would have that.
9 Q. Could you also look at subpart j on
10 the same page. It says, "Testimonials from athletes
11 or celebrities in the entertainment world, or
12 testimonials from other persons who, in the judgment
13 of the Administrator, would have special appeal to the
14 persons under twenty-one years of age, shall not be
15 used in cigarette advertising." Did I read that
16 correctly?
17 A. Yes.
18 Q. Do you think that's an appropriate
19 or a good standard to have?
20 MR. ERNY: Objection.
21 A. Again, I would answer it the same
22 way. I don't see any of these standards as
23 appropriate, inappropriate, good or bad. To me they
24 are standards we willingly abide by.
25 Q. Do you know the basis for having

88

1 such a standard?
2 A. No, I do not.
3 Q. Can you imagine any particular
4 reason for why you would have this standard?
5 MR. ERNY: I'm sorry. Objection.
6 A. I can't imagine the reasons, no.
7 Q. Same page, Section 2. It states
8 that "No cigarette advertising which makes a
9 representation with respect to health shall be used,"
10 and then it says, "unless: The Administrator shall
11 have determined that such representation is
12 significant in terms of health and is based on
13 adequate relevant and valid scientific data; or if the
14 Administrator shall have determined it to be
15 appropriate, a disclaimer as to significance in terms
16 of health shall be set forth in such advertising in
17 substance and form satisfactory to the Administrator;
18 or c, The Administrator shall have determined that the
19 representation with respect to health in such
20 advertising is not material." Did I read that
21 correctly?

22 A. Yes.
23 Q. So there, there are three parts to
24 Section 2; correct?
25 A. That's correct.

89

1 Q. Do you know who the administrator
2 is?
3 A. I --
4 MR. ERNY: Objection. Presently?
5 Q. Presently.
6 A. I don't know.
7 Q. Did you ever know who any particular
8 administrator was at any particular time?
9 A. I don't know who they're referring
10 to here as the administrator.
11 Q. Okay. Do you know whether or not
12 Brown & Williamson has ever made health claims with
13 respect to their cigarette advertising?
14 MR. ERNY: Objection, unless it goes
15 to the scope of the question.
16 A. I don't understand what you mean by
17 health claims.
18 Q. Made rep -- made representations
19 with regard to the health, with regard to a person's
20 health, involving cigarettes.
21 MR. ERNY: Similar objection.
22 A. Again, I see that as a very broad
23 statement, representation in terms of health. Could
24 you be more specific, please?
25 Q. Are you saying that because your

90

1 counsel objected on the basis of the scope of the
2 question; is that, is that the reason that you're
3 saying that you don't understand the question?
4 A. No, I'm saying I don't understand
5 the question because I think that's a very broad
6 represen -- interpretation in terms of health, and I
7 don't understand specifically what you mean.
8 Q. You said you're familiar with the
9 Advertising Code; correct?
10 A. Yes.
11 Q. And so as a result, we need to
12 understand what the provisions are of the Advertising
13 Code; correct?
14 A. To some extent, although we do
15 review everything with our law department, who is very
16 familiar with the Advertising Code, and advises us if
17 we're doing anything in violation, or attempting to do
18 anything in violation of the Cigarette Advertising
19 Code.
20 Q. Okay, and it says that "No cigarette
21 advertising which makes a representation with respect
22 to health shall be used;" correct?
23 A. Unless the following, yes.
24 Q. Unless the following. Do you know
25 whether or not Brown & Williamson has ever had a

91

1 cigarette advertisement which makes a representation
2 with respect to health?
3 A. Again, again, in that regard I would
4 have to refer to our in-house attorneys, who would
5 define for me legally what is meant by representation
6 in terms of health.

7 Q. Sitting here today, do you know
8 whether or not any Brown & Williamson advertisements
9 have made a representation with respect to health?
10 MR. ERNY: Objection.
11 A. Again, since I don't know the legal
12 definition of representation in terms of health, I
13 could not answer that question.
14 Q. This provision that I just read,
15 Section 2, with subparts (a), (b) and (c), do you
16 think that this is a good standard to have?
17 MR. ERNY: Objection.
18 A. Again, I would answer the same way I
19 answered your previous question. I don't view these
20 standards as good or bad. They just are standards and
21 we willingly follow them.
22 Q. Do you know the basis for why this
23 particular standard exists?
24 A. I don't know the basis for why any
25 of these standards exist.

92

1 Q. Can you imagine a particular reason
2 why one would have this particular standard?
3 MR. ERNY: Objection.
4 A. No, I cannot imagine reasons for the
5 standards.
6 Q. Could you turn to page 6.
7 (Whereupon, the witness complies
8 with the request.)
9 Q. Section 4 states, "No cigarette
10 advertising shall be used which refers to the removal
11 or the reduction of any ingredient in the mainstream
12 smoke of a cigarette, except that it shall be
13 permissible to make a representation as to the
14 quantity of an ingredient present in the mainstream
15 smoke or as to the removal in toto of an ingredient
16 from the mainstream smoke, or as to the absence of an
17 ingredient normally present in the mainstream smoke,
18 if:
19 (A), The Administrator shall have
20 determined that such representation is significant in
21 terms of health and is based on adequate relevant and
22 valid scientific data; or,
23 (B), A disclaimer as to significance
24 in terms of health shall be set forth in such
25 advertising in substance and form satisfactory to the

93

1 Administrator; or,
2 (C), The Administrator shall have
3 determined that a disclaimer is unnecessary for the
4 reason that the representation in such advertising has
5 no health implication or that such implication is not
6 material; and,
7 (D), The quantity of such ingredient
8 is determined and expressed in accordance with uniform
9 standards adopted by the Administrator for measuring
10 the quantity of the ingredient present in the
11 mainstream smoke, provided that, until such uniform
12 standard is so adopted, the quantity of such
13 ingredient may be determined and expressed in
14 accordance with any recognized scientifically valid
15 method disclosed to the Administrator without any
16 requirement of confidential treatment." Did I read
17 that correctly.

18 A. Yes.
19 Q. What do you understand that
20 particular provision to mean?
21 A. Well, it's a little difficult for me
22 to understand it because it seems to be written in
23 legal terminology and in scientific terminology that I
24 am, as a marketer, I'm not that familiar with, but my
25 understanding is that it discusses the removal or

94

1 reduction of anything that's involved in the smoking
2 of a cigarette.
3 Q. Do you know why this particular
4 provision came into being?
5 A. No, I do not.
6 Q. Do you know whether or not any
7 Brown & Williamson advertisements have ever violated
8 Section 4 of the Cigarette Advertising Code?
9 MR. ERNY: Objection.
10 A. I do not know.
11 Q. Do you think that this is a good or
12 appropriate standard to have as part of the Cigarette
13 Advertising Code?
14 MR. ERNY: Objection.
15 A. Again, I don't refer to our
16 standards as good or bad. They are our standards we
17 willing abide by.
18 Q. Could you turn to page 7, please.
19 (Whereupon, the witness complies
20 with the request.)
21 Q. Article 5, it states, "Procedures in
22 Event of Violation of Code." And under Section 1 it
23 provides up to a penalty of a hundred thousand dollars
24 for violation of the code provision. Do you know if
25 that provision is still in force?

95

1 A. I don't know.
2 Q. Do you know whether or not Brown &
3 Williamson has ever had to pay a penalty of a hundred
4 thousand dollars?
5 A. I don't know.
6 Q. Do you know if any cigarette company
7 has ever had to pay a hundred thousand dollars as
8 penalty for a violation of any of the code provisions?
9 A. I don't know.
10 Q. Do you think that any of the
11 principles spelled out in the Advertising Code are
12 good ones?
13 MR. ERNY: Objection.
14 A. Again, I don't view these principles
15 as either good or bad. These are the principles of
16 the Advertising Code we as a company willingly abide
17 by.
18 Q. Part of marketing is advertising;
19 correct?
20 A. That's correct.
21 Q. And one of the purposes of
22 advertising is to affect a person's decision making to
23 buy a product; correct?
24 A. I wouldn't word it that way, no. I
25 would say that there are two purposes of advertising.

96

1 One -- in terms of advertising cigarettes -- one, to
2 convince current smokers of that brand to continue to

3 smoke that brand. The other being to convince current
4 smokers of -- adult smokers of competitive brands to
5 switch to a particular brand.

6 Q. Outside the context of cigarette
7 advertising generally, as a general principle, isn't
8 one of the purposes of advertising to affect a
9 person's decision making to buy a product?

10 A. I would say from all my experience
11 in both education and in working in marketing, that
12 advertising is not effective in convincing someone to
13 use a product. Advertising is extremely effective, in
14 many cases, in convincing someone to switch brands.

15 Q. Is it expected that people will rely
16 on advertising?

17 MR. ERNY: Objection.

18 A. I don't understand really.
19 Advertising for what?

20 Q. Any sort of representations that are
21 made in advertising, is it expected that people will
22 rely on those particular representations?

23 MR. ERNY: Objection.

24 A. I'm sorry. I don't understand your
25 question. Rely on for what? I don't understand.

97

1 Q. At part of their decision making as
2 to whether or not to purchase the products?

3 A. Again, I would say that I think it
4 is reasonable to expect that people would rely on
5 advertising in their decision of whether or not to
6 change brands, if they're in the mind-set of being
7 willing to change brands. I don't see advertising as
8 being effective or relevant to people who are not
9 currently using a particular product.

10 Q. Do you smoke?

11 A. No, I don't.

12 Q. Have you ever smoked?

13 A. I smoked for maybe six months.

14 Q. When did you smoke?

15 A. When I was twenty-two, twenty-three.

16 Q. And what brand did you smoke?

17 A. Kool filtered kings.

18 Q. A Brown & Williamson product?

19 A. I was working at Brown & Williamson
20 at the time.

21 Q. How long had you been at Brown &
22 Williamson for?

23 A. I started at Brown & Williamson when
24 I was twenty.

25 Q. So?

98

1 A. Two to three years.

2 Q. And why did you decide to start
3 smoking Kools?

4 A. I just decided to see what smoking
5 cigarettes was like. I had never smoked a cigarette.
6 I made the decision I wanted to try cigarettes, and
7 Kool was the product I decided to try.

8 Q. And why did you stop?

9 A. I didn't enjoy smoking.

10 Q. What was about it that you didn't
11 enjoy?

12 A. It just wasn't something for me. I
13 didn't enjoy having to carry around the product, a

14 pack of cigarettes, having to light it up, having to
15 put it out in a ashtray. The whole smoking experience
16 just wasn't enjoyable to me.

17 Q. Were you concerned about the risks?

18 A. I was aware of the risk. I wasn't
19 concerned about the risk because I wasn't -- I didn't
20 view myself as a real smoker.

21 Q. Did that play a part in your reason
22 to stop smoking?

23 A. Did what play a part?

24 Q. Concerns about risk?

25 MR. ERNY: I'm going to object. She

99

1 didn't say she was concerned about the risk. She said
2 she was aware of the risks.

3 Q. I'm, I'm asking.

4 A. Would you state the question again,
5 please?

6 Q. Sure. Were concerns about the risk
7 of smoking, did that play a part in your decision to
8 stop?

9 A. No, my decision to stop was based on
10 the fact I didn't enjoy smoking.

11 Q. What's Brown & Williamson current
12 position on whether or not cigarette smoking causes
13 any types of human illnesses?

14 A. Brown & Williamson's position is
15 that cigarette smoking does cause certain diseases.

16 Q. Which diseases?

17 A. Lung cancer and certain other --
18 emphysema and other lung diseases.

19 Q. Heart disease, too?

20 A. I don't know for sure.

21 Q. And what's its position on
22 addiction?

23 A. Based on the more popular definition
24 of addiction, which again is, is not the definition I
25 used previously in terms of heroin and cocaine and

100

1 that sort of thing, but the more popular, more broadly
2 used definition of addiction, Brown and William --
3 Brown & Williamson's position is cigarettes are
4 addictive.

5 Q. Anytime in the course of your
6 employment with Brown & Williamson, did you discuss
7 whether or not cigarette smoking causes lung cancer,
8 for example?

9 A. That's a pretty broad question. Did
10 I discuss it with people like coworkers, on the
11 elevator; can be you more specific, or just in
12 general?

13 Q. In general.

14 A. In general, as an employee of
15 Brown & Williamson, yes, I would discuss with my
16 friends or coworkers the risks associated with
17 smoking.

18 Q. And did those conversations start
19 from a point at which you began your employment at
20 Brown & Williamson up until the present?

21 A. I don't recall. When I came to
22 Brown & Williamson I was aware of the risks associated
23 with smoking.

24 Q. And do you think -- do you accept

25 that cigarette smoking causes lung cancer?

101

1 MR. ERNY: Objection. Are you
2 asking for her personal opinion now?

3 MR. BERNEY: Well, I'm asking for
4 her personal opinion, and then as it -- and then as it
5 will relate to marketing the product.

6 MR. ERNY: That's fine. It was just
7 that you were in the company position, and then you
8 asked the question and I didn't know whether I should
9 object or ask for her to answer it, or whether you
10 were asking for her personal opinion. That's all.

11 MR. BERNEY: Okay.

12 A. Are you asking my personal
13 opinion --

14 Q. Yes.

15 A. -- do I believe cigarette smoking
16 causes lung cancer?

17 Q. Uh-huh.

18 A. I'm not a scientist. I'm not a
19 doctor. I don't know what causes disease. I believe
20 that there is plenty of statistical evidence out there
21 that would indicate that cigarette smoking causes lung
22 cancer.

23 Q. At any time did you have any type of
24 training sessions on how you should answer that
25 question, if asked?

102

1 MR. ERNY: I'm going to object, just
2 to the extent that that may impinge on attorney-
3 client communication, but subject to that objection
4 you can answer the question.

5 A. Again, could you restate the
6 question, please, sir?

7 Q. Sure. Did you ever have any type of
8 training sessions on how you should answer the
9 question, if asked, does cigarette smoking cause lung
10 cancer?

11 A. What do you mean by training
12 sessions?

13 Q. Did anyone ever talk to you about
14 how you should answer that question?

15 MR. ERNY: Again, the same
16 objection; to the extent that he's asking for
17 information that you gained in conferences with your
18 attorneys or the company's attorneys, I instruct you
19 not to answer that. Anything else, obviously is fair
20 game and you can answer that question. And just --
21 but for my clarification, are you talking about
22 answering with regard to her personal opinion, or are
23 you back now asking about the company position?

24 MR. BERNEY: Either.

25 MR. ERNY: Then add an objection to

103

1 the form of the question.

2 A. It's been a while, sir. Could you
3 please repeat the question.

4 Q. Sure. Did anybody from Brown &
5 Williamson, other than Brown & Williamson attorneys,
6 ever talk to you about how you should answer the
7 question, if posed to you, the question being, does
8 cigarette smoking cause lung cancer?

9 A. No.

10 Q. Do you think that a tobacco company
11 has a duty to make their products as safe as they can?
12 MR. ERNY: Objection.
13 A. I think a tobacco company has pro --
14 produces a legal product and, as a tobacco company,
15 Brown & Williamson certainly has done research to try
16 to determine how to make a safer cigarette.
17 Q. What research are you familiar with?
18 A. I'm not familiar with specific
19 research, but I know in reviewing the company Web
20 site, that the com -- company has supported both
21 internal research and supported external research in
22 trying to find out what it is about cigarette smoking
23 that causes diseases such as lung cancer.
24 Q. And when did Brown & Williamson do
25 that research?

104

1 A. To the best of my knowledge, that
2 has always been a company position.
3 Q. Now, you indicated that the
4 company's position is that cigarette smoking does
5 cause certain diseases, including lung cancer;
6 correct?
7 A. That is correct.
8 Q. Has that position changed over time?
9 A. The position has not changed. It
10 has been more clearly articulated over time.
11 Q. How has it been clearly -- how has
12 it been more clearly articulated over time?
13 A. Prior to probably about 1997, when
14 Nick Brookes came to the company, the company's
15 position I believe was misinterpreted because the
16 company was focusing on the causation aspect of
17 diseases, such as lung cancer, and the fact that
18 external scientists as well as internal scientists had
19 not been able to, and still, to the best of my
20 knowledge, have not been able to determine what it is
21 about cigarette smoking that causes lung cancer. The
22 company did acknowledge, and has always acknowledged,
23 the epidemiological studies that show that there is an
24 increased, significantly increased, risk among the
25 population of smokers getting lung cancer versus

105

1 nonsmokers.
2 The issue became dip -- Brown &
3 Williamson's statement on its policy was not -- was
4 articulated again in, in context of causation, which
5 caused the inability to have discussions between the
6 health officials and Brown & Williamson in terms of
7 finding what it is about cigarette smoke that causes
8 lung cancer.
9 In 1997 when Nick Brookes became
10 chairman of the company, he asked the company
11 scientists again to reevaluate all of the evidence
12 that's available and more clearly articulate our
13 company's position. At that time the clear
14 articulation of the position is, yes, we do accept
15 that cigarette smoking causes lungs cancer. We still
16 want to work with scientists to find out what it is
17 about it that causes lung cancer, so that we can
18 develop a safer cigarette.
19 Q. So then the position has not -- what
20 you're saying is, Brown & Williamson's position has

21 not changed over time?
22 A. What I'm saying is that the
23 articulation of our positioning has changed over time,
24 but the basic positioning has not changed.
25 Again, if you look at

106

1 epidemiological studies, over time, consistently
2 Brown & Williamson has admitted that based on
3 epidemiological studies that one would make the
4 conclusion that the risk of lung cancer is
5 significantly higher in populations of smokers versus
6 nonsmokers.

7 Q. Was there a time at which Brown &
8 Williamson said that cigarette smoking does not cause
9 lung cancer?

10 A. I believe that may have been a
11 misinterpretation of the positioning. My
12 understanding as what Brown & Williamson had said
13 prior to 1997, was that we didn't know what caused
14 lung cancer because we didn't know what specifically
15 in cigarettes smoke caused the lung cancer. Again, I
16 think it was the confusion or misinterpretation of the
17 company's desire to find out what it was about the
18 cigarette smoke that caused the lung cancer and, to my
19 knowledge, that still is not known.

20 Q. So then why did Brown & Williamson
21 change its position if it's still not known?

22 MR. ERNY: I'm going to object.
23 That misconstrues her testimony. She didn't say they
24 changed their position. She said they changed the way
25 the position was articulated.

107

1 Q. Let me -- then let me withdraw that
2 question.

3 Isn't it the case that Brown &
4 Williamson prior to 1997 said that it's not proven
5 that cigarette smoking causes lung cancer?

6 A. I'm not sure exactly what was said
7 in that regard. I do know that prior to 1997 the
8 emphasis from Brown & Williamson was on the proof of
9 causation, and that there were statements made in
10 terms of there not being any causation proof for what
11 it was about the cigarette smoking that caused
12 disease. There was no proof to that effect.

13 Q. And as results of that, wasn't it
14 the case that Brown & Williamson did not accept that
15 cigarette smoking causes lung cancer?

16 A. My belief is what Brown & Williamson
17 said prior to 1997, again, was focused on causation
18 and the fact that there was no causation proof as to
19 cigarette smoking causing lung cancer. That was not
20 referencing the statistical evidence based on
21 epidemiological studies.

22 Q. So, therefore, at that time period
23 that you just referenced, isn't it the case that
24 Brown & Williamson did not accept that cigarette
25 smoking causes lung cancer?

108

1 MR. ERNY: Objection. It's been
2 asked and answered.

3 MR. BERNEY: I don't think she
4 answered the question.

5 MR. ERNY: I think she did.

6 A. Again, I believe it was a
7 misinterpretation of Brown & Williamson's statement,
8 Brown & Williamson's positioning. Brown & Williamson
9 has never denied, to my -- to the best of my
10 knowledge, that cigarette smoking when it looked at
11 statistical studies, epidemiological studies, that
12 there was not -- Brown & -- in my opinion or my
13 understanding, Brown & Williamson has never denied
14 that there were epidemiological studies with the
15 increased incidents of cigarette smoking populations
16 having lung cancer versus nonsmoking populations.

17 What Brown & Williamson did focus on
18 in its public communication regarding lung cancer
19 prior to 1997 was the fact that there was no known
20 causation to help us better determine what it was
21 about cigarette smoking that caused the diseases and
22 so that we could then develop a safer cigarette.

23 Q. Okay, I, I don't want to focus on
24 the epidemiology. I'm just talking about Brown &
25 Williamson's position on whether or not cigarette

109

1 smoking causes lung cancer. That's all I'm interested
2 in. Prior to Nick Brookes taking over --

3 A. Uh-huh.

4 Q. -- wasn't it the case that Brown &
5 Williamson stated that there's no proof that cigarette
6 causes lung cancer?

7 A. Again, to answer that question, I
8 would have to say that in the context of the statement
9 that Brown & Williamson made regarding lung cancer and
10 cigarette smoking, that prior to 1997 Brown &
11 Williamson's focus was on causation. In the
12 statements that Brown & Williamson made were regarding
13 there being no scientific evidence to support
14 causation of lung cancer and cigarettes. There was no
15 way of knowing what caused specific lung cancers, what
16 in the cigarette smoke caused specific lung cancers.

17 Q. But it accepted the general
18 proposition that cigarette smoking causes lung cancer
19 then?

20 MR. ERNY: Excuse me, Mr. Berney,
21 let me object. I've let you go on this for a while
22 now. First of all, this is outside the scope of the
23 deposition notice.

24 Second of all, I don't believe a
25 marketing person is responsible to give historical

110

1 background of the company position. If you would like
2 to notice the deposition or ask us to present
3 somebody, a scientist, for example, who can more
4 clearly articulate the company's position over time,
5 we're happy to do that. But this is beyond the scope
6 of this dep -- the deposition notice and it's probably
7 beyond the scope of her job responsibility. I believe
8 she's answered the question. You're just asking it a
9 different way because you don't like the answer that
10 she's given you, and I'm asking that you move on.

11 MR. BERNEY: In, in brief response,
12 it is incorporated as part of the deposition notice.
13 There's an element in the deposition notice or one of
14 the categories as public relations, and this is part
15 and parcel of the public -- of public relations,
16 especially as how it pertains to the way Brown &

17 Williamson annunciated its public position with regard
18 to whether or not cigarette smoking causes lung
19 cancer. Furthermore, I'm not asking this question
20 because I don't like the answer she's given me. I'm
21 asking this question because I don't understand the
22 answer that she's given me, and I'm trying to get a
23 better sense of what her answer is.

24 MR. ERNY: Let me make a response to
25 that. First of all, let me look at this notice and

111

1 see if public relations is in there. I don't believe
2 that it is. But even if it is in there, I don't
3 believe you've laid the foundation that this is, in
4 fact, public relations. So I, I disagree with your
5 position and I would reiterate the statement that I
6 made previously. I believe, I believe public
7 relations program is included in number 9, but again,
8 I don't believe you've laid the foundation of what
9 you're talking about is public relations programs.

10 MR. BERNEY: And, and to quote you,
11 before we can agree to disagree.

12 Q. Do you know whether or not the,
13 quote, unquote, "rearticulation" of Brown &
14 Williamson's position was due to any concerns about
15 litigation?

16 A. My understanding, and the purpose
17 for the rearticulation of Brown & Williamson's
18 positioning, was so that the company could move
19 forward in working more closely with the health
20 authorities in finding what it is about cigarette
21 smoke that causes diseases, such as lung cancer, and
22 prior to that rearticulation of our positioning, we
23 were at an impasse in being able to work with the
24 health authorities because of the misinterpretation of
25 what we were, were proclaiming. So Nick Brookes asked

112

1 again that we -- our scientists take another look at
2 all the evidence and more clearly articulate our
3 positioning so that we could move beyond that impasse
4 and work closely with the health officials and the
5 external scientists in finding the answer to what
6 could -- how we could make a safer cigarette.

7 Q. So, what you're saying then is, it
8 was difficult to work toward developing a safer
9 cigarette until Brown & Williamson rearticulated its
10 position; is, is that correct?

11 A. What I'm saying is, that we were
12 basically at an impasse, prior to the rearticulation
13 of our positioning, between Brown & Williamson having
14 dialogue with public health officials in finding the
15 way to determine the research that needed to be done
16 to determine what it was about cigarette smoking that
17 causes lung cancer.

18 Q. Do you know of any public statements
19 issued by Brown & Williamson in which they denied any
20 kind of causal connection between smoking and human
21 disease?

22 A. I'm not familiar with any particular
23 statements.

24 Q. Any particular press releases?

25 A. I'm not familiar with it.

113

1 Q. We talked about addiction before. I

2 don't know if you are giving me necessarily your own
3 personal opinion on addiction, or whether or not you
4 were giving me the Brown & Williamson's position on
5 addiction. Just to clarify that, what's Brown &
6 Williamson's present position on whether smoking is
7 addictive?

8 MR. ERNY: Just for the record,
9 that's been asked and answered, but you can answer the
10 question.

11 THE WITNESS: Okay, thank you.

12 A. Brown & Williamson's position on
13 addiction is based on the current broader definition
14 of addiction, cigarette smoking is addictive.

15 Q. Has Brown & Williamson always
16 accepted that cigarette is addictive, based on that
17 quote, unquote, "newer definition" that you just
18 elaborated?

19 MR. ERNY: Just, just for the
20 record, let me make the similar objection that I made
21 when we were going down the causation road. From a
22 marketing perspective she's probably not the person.
23 It's not within marketing to, to give a historical
24 context to Brown & Williamson's position. Again, we
25 have the ability and we'd be willing to produce a

114

1 scientist that. Subject to that objection, you can
2 answer the question to the best of your ability.

3 A. Could you restate the question,
4 please, or repeat the question, please.

5 Q. Sure. You indicated that there's a
6 quote, unquote, "newer definition" for addiction.
7 Based on that newer definition of addiction, has
8 Brown & Williamson always accepted that its products
9 are addictive, using that newer definition of
10 addiction?

11 MR. ERNY: Object to the form.

12 A. I don't know. To the best of
13 knowledge, yes.

14 Q. Using this newer definition of
15 addiction -- actually strike that.

16 Do you understand that addiction can
17 cause cravings?

18 A. I don't understand what you mean.
19 Could you restate that.

20 Q. Sure. If somebody's addicted to a
21 substance, do you understand that to mean that they
22 have cravings for a particular substance?

23 A. Yes, I would say that.

24 Q. And, and let me just ask you some
25 preliminary questions. As a marketer you need to

115

1 understand your product; correct?

2 A. That's correct.

3 Q. And so if there are claims that
4 cigarettes are addictive, you need to have an
5 rudimenta -- a rudimentary understanding of what
6 addiction is; correct?

7 MR. ERNY: Objection.

8 A. I wouldn't agree that necessarily to
9 market my -- as a marketer, that I need to have an
10 understanding of what addiction is to market my
11 products, no. I have other experts in the company
12 that I can go to for that.

13 Q. But, nonetheless, you're trying to
14 get that information from other people in the company;
15 correct?

16 MR. ERNY: Objection.

17 A. In order to do my job I don't go to
18 other people in the company and ask about addiction,
19 no.

20 Q. Do you understand that people can
21 actually go through withdrawal if they don't satisfy
22 an addiction?

23 A. I would say that depends on your
24 definition of addiction. If you're talking addiction
25 in terms of the definition in terms of like heroin and
116 cocaine, yes, I do understand that.

1 Q. How about with regard to nicotine
2 addiction?

3 A. Again, if you're talking nicotine
4 addiction in terms of nicotine being as addictive as
5 cocaine and heroin, I don't know whether that, in
6 fact, is the case.

7 Q. Can we agree that addiction
8 influences choices?

9 MR. ERNY: I'm going to object.

10 A. I don't know what you mean by
11 influences choices.

12 Q. For example, under any definition of
13 addiction, if somebody's addicted to a product, does
14 it make it -- does that make it more likely that the
15 person's going to use the substance?

16 MR. ERNY: Objection.

17 A. Again, I'm afraid I -- I'm not sure
18 I understand your question.

19 Q. What part of it don't you
20 understand?

21 A. Could you state it again, please?

22 Q. Sure. If somebody's addicted to a
23 particular substance, is it more like -- under any
24 definition of addiction that you understand, is it
25 117 more likely that that person will then try and use
1 that particular substance to satisfy the addiction?

2 MR. ERNY: Objection.

3 A. Not specifically. I mean if I use
4 the term addiction, defined the way I defined it more
5 loosely in terms of my -- the fact that I like Diet
6 Cokes and like to drink Diet Cokes, it doesn't mean
7 that I don't occasionally drink a Diet Pepsi or don't
8 occasionally drink another soft drink. I just prefer
9 Diet Coke. I prefer the taste.

10 Q. And you think that's the same way
11 with cigarettes?

12 A. I don't know what you mean, do I
13 think that's the same way with cigarettes?

14 Q. That your feeling associated with
15 Diet Coke in terms of liking to use it, applies
16 equally with regard to cigarettes?

17 A. I don't know. I don't smoke.

18 Q. What's your understanding then?

19 A. I don't know. My understanding is
20 that cigarettes in terms of the definition addiction,
21 the more broad -- broadly used terms of the definition
22 of addiction in terms of being something that is
23

24 enjoyed, like in habit forming, and can be difficult
25 to quit, I believe that that does relate to

118

1 cigarettes, yes.

2 Q. And is it your understanding then
3 that Diet Coke, as you like to use Diet Coke, can be,
4 can be addictive under this new definition of
5 addiction that you've articulated?

6 MR. ERNY: I'm going to object only
7 in the sense that -- are you asking her her personal
8 opinion, or are you asking her for what everybody else
9 thinks about that?

10 MR. BERNEY: Her personal opinions.

11 MR. ERNY: Okay.

12 A. My personal opinion, it would be --
13 I use Diet Coke under the same sort of scenario I used
14 that broader term of, of addic -- of addiction. It
15 would be difficult for me to give up Diet Coke because
16 I enjoy Diet Coke so much.

17 Q. So that's a yes?

18 A. State the question again, please,
19 and I'll -- in order to give a yes or no answer.

20 Q. Was that your feeling about Diet
21 Coke or Coke, in your use of it, do you consider that
22 to be an addictive habit or behavior under this,
23 quote, unquote, "new definition" of addiction that you
24 articulated?

25 A. I would use it that way, yes.

119

1 Q. Other than conversations that you
2 may have had with attorneys, do you ever talk to
3 anybody at Brown & Williamson about how to answer a
4 question posed to you as to whether or not cigarette
5 smoking can be addictive?

6 A. No, I do not.

7 Q. Do you know if Brown & Williamson's
8 position on whether smoking is addictive has changed
9 over time?

10 A. I know that Brown & Williamson,
11 again, its articulation of its position on addiction
12 has changed over time.

13 Q. Meaning what?

14 A. Meaning just the fact that the
15 definition of addiction has changed over time even
16 with the Surgeon General. For instance, the Surgeon
17 General, the previous report in the '60s, I believe,
18 specifically said that cigarette smoking was not
19 addictive based on that definition, which was more in
20 terms of the hard drugs, like heroin and cocaine, and
21 Brown & Williamson supported that in terms of, under
22 that definition, cigarette smoking was not addictive.

23 Using the most recent definition of
24 the Surgeon General, again, the more loosely defined
25 definition of addiction, Brown & Williamson has stated

120

1 that cigarette smoking is addictive.

2 MR. ERNY: Mr. Berney, I know that
3 this has not been one hour, but my thinking was that
4 if we break for lunch now we might allow the court
5 reporter and you and the videographer to beat the
6 lunch rush and maybe we could be back at one o'clock
7 to commence again, if it's a good breaking point; If
8 it's not, we can continue that. That's up to you.

9 MR. BERNEY: Let me ask a couple
10 more questions and I'll be done --
11 MR. ERNY: That's fine.
12 MR. BERNEY: -- let's say in five
13 minutes.
14 MR. ERNY: That's fine, Dave. Thank
15 you.
16 MR. BERNEY: That is a good idea.
17 Q. (By Mr. Berney) Do you know whether
18 or not the rearticulation of Brown & Williamson's
19 position on whether or not cigarette smoking is
20 addictive was based in part on public relations
21 reasons?
22 MR. ERNY: Let me just object again
23 like I did previously. You can ask this question of
24 her, but I -- it -- it's not within her job
25 responsibility, as I understand it, to give a

121

1 historical perspective on the company position as to
2 addiction. You have the ability, and we'll be happy
3 to produce a scientist that is more knowledgeable
4 about that. Subject to that objection or statement,
5 you, you can answer the question.
6 A. Could you say it again, please.
7 Q. Sure. Do you know whether or not
8 Brown & Williamson's, quote, unquote, "rearticulation"
9 as to whether or not cigarette smoking is addictive
10 changed in part based on public relations concerns?
11 A. I don't know.
12 Q. Do you know whether or not it
13 changed in part based on litigation concerns?
14 A. I don't know.
15 Q. Do you know why Brown & Williamson
16 never warned consumers that cigarettes are addictive
17 under any definition?
18 MR. ERNY: I'm going to object.
19 A. I don't understand your question
20 specifically. Why Brown & Williamson never warned
21 consumers of addiction?
22 Q. Yes.
23 A. I don't know.
24 Q. Should they have?
25 MR. ERNY: Objection.

122

1 A. I don't know that I can make that
2 judgment or that -- I don't, I don't really have an
3 opinion as to whether or not Brown & Williamson should
4 have done something. Again, I think if, if there were
5 legal requirements to do so, absolutely we should have
6 done so. If there were regulations that say we should
7 do so, absolutely we should have done so.
8 Q. Is it important for a consumer to
9 know whether or not a product is addictive?
10 A. I would answer that based -- I would
11 say it depends on your definition of addiction.
12 Q. Okay. Do you agree that cigarette
13 smoking can be difficult to quit?
14 A. I do agree cigarette smoking can be
15 difficult to quit.
16 Q. If Brown -- if Brown & Williamson
17 understood that, that quitting smoking can result in
18 physical withdrawal, should Brown & Williamson have
19 given that information to the consumer?

20 MR. ERNY: Objection.
21 A. First of all, I don't know that
22 Brown & Williamson ever had that sort of information.
23 Should that information have existed? I would think
24 that information would exist with the public health
25 authorities. That information would have been

123

1 disseminated to consumers through the public health
2 authorities.

3 Q. So then that's a no, Brown &
4 Williamson should not have given that information to
5 consumers?

6 MR. ERNY: Objection.

7 A. Again, I believe the way I answered
8 it was, I don't know that that information existed.
9 If that information did exist, I believe that
10 information would have been given to the public health
11 authorities, who would have determined the best way to
12 disseminate information such as that to consumers.

13 Q. You're saying that Brown &
14 Williamson would have given that information to health
15 authorities, if it existed?

16 A. I don't know. I would assume so,
17 yes.

18 Q. At the very least they should have,
19 is what you're saying?

20 MR. ERNY: Objection. Misstates her
21 testimony.

22 Q. Is, is that what you're saying, that
23 they should have?

24 A. I don't believe that's what I said.
25 I think what I said was, Brown & Williamson, if they

124

1 had that information, I would assume they would have
2 given that information to the health authorities.

3 Q. Do you think if they had that
4 information, Brown & Williamson should have given that
5 information to the health authorities?

6 A. Based on what you said previously
7 about -- could, could you restate that previous part
8 again, I'm sorry --

9 Q. Sure.

10 A. -- of that question.

11 Q. If Brown & Williamson had
12 information that people would go through physical
13 withdrawal if they stopped smoking, should they have
14 given that information to the health authorities?

15 A. I would respond to that question by
16 saying, again, if Brown & Williamson had that
17 information that people would go through the types of
18 withdrawals they do with heroin, hard drugs like
19 heroin or cocaine, that information I believe should
20 have been given to the health authorities, yes.

21 Q. Okay.

22 MR. BERNEY: Why don't we stop
23 there.

24 MR. ERNY: That's fine.

25 (Adjourned at 11:50 a.m. for a lunch
125

1 recess and reconvened at 1:00 p.m. Mr. Raborn is not
2 present.)

3 MR. BERNEY: You don't have to put
4 this on the record.

5 (Whereupon, a discussion was held
6 off the record with video off.)
7 MR. BERNEY: Just note that we are
8 not going to complete the deposition today and the
9 parties have agreed at some mutually agreeable dates
10 to bring Sharon Smith back to conclude the deposition.
11 At this point we haven't agreed on exactly where the
12 conclusion of the deposition will take place, but I
13 just wanted to note that for the record.
14 MR. ERNY: And, and just to amplify,
15 at the lunch break, pursuant to some previous
16 discussions, Mr. Berney agreed to look at his notes to
17 see if he could finish today. He advised us that he
18 could not, and in view of the fact that we started at
19 nine and we're going a full day, we've agreed to stop
20 the deposition at a certain time this afternoon,
21 according to Ms. Smith's business needs, we've agreed
22 to produce her for a deposition again. I expressed my
23 preference for Louisville, which Mr. Berney
24 understands, but, but we don't have agreement in that
25 part. I asked him approximately how long he thought
126
1 he would take, and without getting a hard and fast
2 deadline, he believes that it would be about a half a
3 day and then we're, we're agreeable to that.
4 THE VIDEOGRAPHER: We're back on the
5 record.
6 (Back on videotape.)
7 Q. Going specifically to the issue of
8 marketing, did Brown & Williamson ever try to market
9 any of its cigarette products so that smokers would
10 rationalize or minimize the dangers of smoking?
11 A. Not to my knowledge.
12 Q. Did Brown & Williamson ever try to
13 test market Viceroy cigarette advertisements so that
14 the ads would help smokers rationalize or minimize the
15 dangers of smoking?
16 A. Not to my knowledge.
17 Q. Do you know whether or not any
18 employees of Brown & Williamson ever wrote any
19 documents regarding test marketing Viceroy's by
20 developing some type of marketing scheme so that
21 smoke -- to, to help smokers rationalize or minimize
22 the dangers of smoking?
23 MR. ERNY: I'm going to object to
24 the form.
25 A. Not to my knowledge.
127
1 MR. BERNEY: What's wrong with the
2 form?
3 MR. ERNY: It presupposes that when
4 they wrote about it, it was the Brown & Williamson
5 idea; in other words, there, there may be a faulty
6 premise to the question.
7 Q. Did Brown & Williamson ever try to
8 market any of its cigarette products so as to help
9 smokers repress the dangers of smoking?
10 A. I don't understand what you mean by
11 repress the dangers of smoking.
12 Q. Let me ask it this way. Have you
13 ever seen any documents written by anyone, regarding
14 test marketing Viceroy cigarettes, so as to help
15 smokers repress the dangers of smoking?

16 A. I'm sorry. I still don't understand
17 what you mean by repressing the dangers of smoking.
18 Q. Putting aside for, for a moment your
19 understanding or your lack of understanding of that
20 phrase, have you seen any documents that use that
21 particular terminology, repress the dangers of
22 smoking?
23 A. Not that I recall.
24 Q. Do you know who Carter Broach is?
25 A. No, I do not.

128

1 Q. Do you know any Brown & Williamson
2 employees whose last name is Broach, or who used to
3 work for Brown & Williamson whose last name is Broach,
4 B-r-o-a-c-h?
5 A. No, I don't.
6 Q. Do you know the name Art Heller,
7 H-e double l-e-r?
8 A. No, I don't.
9 Q. Have you ever heard or seen his name
10 in any writing?
11 A. Not that I recall.
12 Q. Same question with regard to Carter
13 Broach, have you ever heard or seen his name in
14 writing?
15 A. Not that I recall.
16 Q. You've testified earlier today that
17 Brown & Williamson accepts the proposition that
18 cigarettes cause cancer; is that correct?
19 A. Yes.
20 Q. If you accept the fact that
21 cigarettes cause cancer, would you agree that it would
22 be unethical to market cigarettes in any type of way
23 that would facilitate in smokers rationalizing away
24 the dangers of smoking?
25 MR. ERNY: Objection.

129

1 A. Could you restate the question,
2 please.
3 Q. Sure. If you accept -- if Brown &
4 Williamson or you accept the fact that cigarettes
5 cause cancer, okay --
6 A. Uh-huh.
7 Q. -- you would agree, would you not,
8 that it would be unethical to market cigarettes in any
9 type of way that would facilitate in smokers,
10 rationalizing or minimizing away the dangers of
11 smoking?
12 MR. ERNY: Objection.
13 A. I don't understand rationalizing or
14 minimalizing the dangers of smoking. What do you mean
15 by that?
16 Q. Sure. If dangers of smoking
17 exist -- strike that.
18 Do you know what the term
19 rationalize away means?
20 A. Generally, yes.
21 Q. And what's your understanding?
22 A. That smokers can make a, a mental
23 calculation, if you will, in terms of making a
24 decision about something.
25 Q. And so what would rationalize away

130

1 mean in that context?
2 A. To make a mental calculation
3 regarding changing their mind about something.
4 (Interruption at door with
5 documents.)
6 Q. And changing their minds in what
7 direction?
8 A. Could you give me the, the phrase
9 again?
10 Q. Sure.
11 A. That's not a very --
12 Q. Rationalizing away or minimizing.
13 A. It would be changing their minds
14 away from what they currently believed.
15 Q. So in the context of rationali --
16 rationalizing away the dangers of smoking, it would
17 mean changing their belief as to the dangers of
18 smoking?
19 A. That's how I would interpret that,
20 yes.
21 Q. Okay. Then using that particular
22 definition, if you accept for, for the moment the fact
23 that cigarettes cause cancer, you would agree, would
24 you not, that it would be unethical to market
25 cigarettes in any type of way that would facilitate in
131
1 smokers rationalizing away or minimizing the dangers
2 of smoking?
3 MR. ERNY: Objection.
4 A. If I understand your question
5 correctly, I would say that it would be unethical to
6 market cigarettes that would change a consumer's
7 understanding that smoking is a dangerous product,
8 that smoking cigarettes are dangerous.
9 Q. Do you know whether or not Brown &
10 Williamson ever marketed its cigarettes with that goal
11 in mind?
12 MR. ERNY: Objection.
13 A. Not to my knowledge.
14 Q. Do you know if Brown & Williamson
15 ever marketed Viceroy cigarettes with that goal in
16 mind?
17 MR. ERNY: Objection.
18 A. Not to my knowledge.
19 Q. Do you know if Brown & Williamson
20 ever considered marketing Viceroy cigarettes with that
21 goal in mind?
22 A. Not to my knowledge.
23 Q. Do you know if any employees of
24 Brown & Williamson ever discussed marketing Viceroy
25 cigarettes with that goal in mind?

132

1 A. I don't know.
2 Q. I am showing -- I'm about to show
3 you a document which we will mark as Plaintiffs'
4 Exhibit 4, which is a January 7th, 1976 letter to who
5 it would appear to be Art Heller from Carter Broach,
6 and then attached to that is what's called the Viceroy
7 Marketing Strategy, dated 1-7-76.
8 (Whereupon, the hereinabove referred
9 to document was marked Plaintiffs' Exhibit Number 4,
10 and attached hereto.)
11 (The document is handed to the

12 witness.)
13 MR. ERNY: Do you have an extra
14 copy?
15 MR. BERNEY: Yes.
16 (The document is handed to counsel.)
17 MR. ERNY: Thank you.
18 MR. BERNEY: Sure.
19 Q. And why don't you take a moment to
20 review it.
21 (Whereupon, the witness complies
22 with the request.)
23 A. Okay.
24 Q. Have you ever seen that document
25 before?

133

1 A. No, I haven't.
2 MR. ERNY: Let me just object to the
3 use of this particular document. It has some markings
4 in red pen, bracketing on various portions, which I
5 don't think are contained on the original. I don't
6 know if they reflect your notes or not, but I, I
7 object to the use of that document for that reason.
8 MR. BERNEY: Yeah, why don't we do
9 this. At, at some point maybe we can substitute your
10 copy for that one. Actually why, why don't we do that
11 right now since I think your copy's probably clean;
12 right?
13 MR. ERNY: That would be fine.
14 Like -- would you like the court reporter to do
15 another Plaintiffs' Exhibit 4 sticker?
16 MR. BERNEY: Yeah.
17 MR. ERNY: Then I would ask that it
18 be put in the upper right-hand corner to cover my
19 notation of Plaintiffs' Exhibit 4, so we truly do
20 have a blank document.
21 MR. BERNEY: I tell you what -- I
22 think I've got an extra one. So why don't we just use
23 this; that way it'll appear on the bottom.
24 (Whereupon, the hereinabove referred
25 to clean document was marked Plaintiffs' Exhibit

134

1 Number 4, and attached hereto.)
2 MR. BERNEY: Thank you.
3 Q. (By Mr. Berney) Have you -- you had
4 an opportunity to review the document; correct?
5 A. That's correct.
6 Q. And have you -- are you familiar or,
7 or have you ever heard of any of these -- any of the
8 particular ideas expressed in here with regard to
9 Viceroy specifically as it pertains to rationalizing
10 or repressing the dangers involved with smoking?
11 A. The only area I'm familiar with,
12 that's covered in this document, is what's on the page
13 4, under Creative Strategy, in terms of the three
14 strategies being pursued, I have seen in the past a
15 document from Bates Advertising that talks
16 specifically about what they call here the
17 satisfaction campaign, the tension release campaign,
18 and the feels good campaign.
19 Q. That was the tension campaign and
20 the satisfaction campaign, and the feels good
21 campaign, did you say?
22 A. What it says here is the tension

23 release campaign --
24 Q. Uh-huh.
25 A. -- the satisfaction campaign, and
135
1 the feels good campaign.
2 Q. Do you know if any of these
3 campaigns were implemented by Brown & Williamson?
4 A. My understanding is that none of
5 these campaigns were authorized by Brown & Williamson,
6 but that Ted Bates Advertising did, in fact, recommend
7 test marketing one or more of these campaigns.
8 Q. And so were these campaigns test
9 marketed?
10 A. I'm not certain. I be -- I believe,
11 from what I've read before, that one or more of these
12 campaigns may have been put into test market, without
13 Brown & Williamson's approval, by Bates.
14 Q. Is that unusual?
15 A. That's very unusual.
16 Q. Do you know of any other campaigns
17 whereby an advertising company for Brown & Williamson
18 test marketed a particular ad campaign without getting
19 the expressed approval of Brown & Williamson?
20 A. No, I do not.
21 Q. Who would have to approve it from
22 Brown & Williamson?
23 A. Approval to run or even in test
24 market or beyond test market, any campaign for Brown &
25 Williamson is ultimately made by the chairman of the
136
1 company.
2 Q. To test market is actually made by
3 the chairman of the company?
4 A. To run any campaign, even in test
5 market, the approval is made by the chairman.
6 Q. What does it when you say test
7 market, what exactly does that mean?
8 A. Generally a test market involves
9 introducing a brand or an advertising campaign into
10 limited geography.
11 Q. Do you know what geographies the
12 tension release campaign and the satisfaction campaign
13 and the feels good campaign -- I'm sorry. Let, let me
14 restate that.
15 What, what geographies were the
16 tension release campaign and the satisfactory -- the
17 satisfaction campaign and the feels good campaign
18 introduced into?
19 A. I don't know.
20 Q. Would there be particular
21 geographies that would be more standardly tested than
22 others?
23 A. Not particularly, no.
24 Q. Do you know if any of these three
25 campaigns were test marketed in the Philadelphia area?
137
1 A. I don't know.
2 Q. Do you know how long each of these
3 three campaigns were test marketed?
4 A. No, I don't know.
5 Q. Could test marketing include a
6 period of years?
7 A. Not generally.

8 Q. What's sort of the, the, the general
9 length of time for test marketing?
10 A. It varies, but generally a test
11 market occurs within a year or less.
12 Q. But it can go longer?
13 A. Not usually, no, not that I'm aware
14 of.
15 Q. Other than test marketing these
16 particular campaigns, were they -- were any of these
17 campaigns marketed over and above simply test
18 marketing?
19 A. Not that I'm aware of.
20 Q. Do you know who might have an answer
21 to that particular question?
22 A. No, I don't.
23 MR. BERNEY: Sir, you look like
24 you're on the verge of saying something.
25 MR. ERNY: I, I am actually. In 138
1 view of the scope of the dep -- the deposition notice,
2 the categories in here, which basically encompass the
3 time frame for 1955 through 1996 --
4 MR. BERNEY: Right.
5 MR. ERNY: -- our belief is it's
6 inordinately broad and, in fact, the -- an
7 organization that's lasted that long has hundreds and
8 hundreds and hundreds of marketing documents. To the
9 extent that we go a second session, if you want to
10 serve a supplemental designation, particularly pointed
11 to these type of questions --
12 MR. BERNEY: Uh-huh.
13 MR. ERNY: -- we can determine who
14 the appropriate person would be, whether it be
15 Ms. Smith or whether it be someone else.
16 MR. BERNEY: Okay.
17 Q. (By Mr. Berney) Have you actually
18 ever seen any of the particular ads that deal with the
19 tension release campaign, the satisfaction campaign,
20 or the feels good campaign?
21 A. I believe the document that I saw
22 before, that spoke of this, did actually have
23 attachments to it, copies of, of these ads.
24 Q. And when did you see that document?
25 A. Within the last six months. 139
1 Q. Why, why was it that you saw the
2 document?
3 A. It was in preparation for another
4 deposition.
5 Q. Did you ever give the deposition?
6 A. No, I did not.
7 Q. And what deposition were you
8 preparing for?
9 A. It was the Mississippi asbestos
10 case.
11 Q. Do you know if you will give a
12 deposition in that case?
13 A. No, the case was -- is over, thrown
14 out, settled, however. I don't know the terminology
15 for it, but --
16 Q. Okay.
17 A. -- the case is no longer.
18 Q. How many pages did the document

19 consist of?
20 A. I don't know exactly.
21 Q. Approximately.
22 A. I would estimate fifteen pages,
23 perhaps.
24 Q. And do you know who the author of
25 the document was?

140

1 A. I don't know.
2 Q. Do you know if it was a marketing
3 person?
4 A. I believe it was a Bates document.
5 Q. And when you say Bates document,
6 you're referring to Ted Bates?
7 A. That's correct.
8 Q. Do you know the dates of the
9 document?
10 A. No, I don't.
11 Q. Do you know approx -- the
12 approximate date of the document?
13 A. No, I don't. I think it was
14 sometime in the '70s, similar date.
15 Q. What else do you recall that
16 document saying?
17 A. I don't recall much, other than I've
18 seen the document and it did refer to these three
19 campaigns and I believe it had attachments to show
20 examples of these campaigns. The document also
21 discussed the fact that Brown & Williamson did not --
22 I believe the document discussed the fact that Brown &
23 Williamson did not approve those campaigns.
24 Q. And is that your basis for saying
25 that Brown & Williamson did not approve of those

141

1 campaigns, what's contained in that document that,
2 that you're talking about right now?
3 A. I also know that from discussions
4 with lawyers.
5 Q. Do you know it from any other types
6 of -- from any other sources?
7 A. No.
8 Q. In preparation for that deposition
9 in the, the Mississippi case, did you review other
10 types of documents?
11 A. Yes, I did.
12 Q. How many doc -- how many documents
13 do you think you reviewed?
14 A. (Demonstrating with hands.) I know
15 this doesn't show up on the tape, but probably thirty,
16 forty documents, perhaps.
17 Q. About four or five inches of --
18 worth of pages?
19 A. Approximately.
20 Q. Did any of those documents deal with
21 Viceroy cigarettes, other than the one you've
22 referenced?
23 MR. ERNY: I'm going to object to
24 this line of questioning. She wasn't deposed on that
25 case. Anything that was given to her was in

142

1 connection of attorney-client privilege. She didn't
2 testify in that case, so there's isn't any waiver of
3 the privilege there, and, quite frankly, other than

4 this question about this document, there hasn't been a
5 question that she has relied upon to answer, utilizing
6 any of these other documents. They're still governed
7 by work product privilege.

8 MR. BERNEY: Well, I'm specifically
9 asking what documents she reviewed. So I'm not asking
10 about communications from attorneys nor the work of
11 attorneys, but rather the documents she reviewed.

12 MR. ERNY: I, I think you
13 misunderstand me. If she reviewed documents for this
14 deposition --

15 MR. BERNEY: What, Mississippi?

16 MR. ERNY: I understand. I'm,
17 I'm -- let me give you an example. If she understood
18 she reviewed documents for this particular deposition
19 here that she utilizes to answer your questions,
20 that's fair game, because in answering the questions
21 in, in preparation is okay. She wasn't deposed in
22 Mississippi. What the attorneys gave her, since she
23 wasn't deposed, is governed by the work product
24 privilege. Had she had been deposed and testified
25 about those documents, much like we did with the

143

1 documents that we brought in to you earlier, I'd
2 provide those documents to you, but she has not, and
3 we're claiming work product privilege to that.

4 How they prepared her for the
5 deposition, because it never occurred, isn't out,
6 isn't out in the open; it's not waived; it's governed
7 by the work product privilege.

8 MR. BERNEY: I, I don't agree with
9 that analysis. Are you instructing her not to answer
10 with regard to this?

11 MR. ERNY: Well, I think at this
12 time I am.

13 Q. Have you ever prepared for any other
14 depositions, other than the Mississippi deposition and
15 this particular deposition?

16 A. Yes, I have.

17 Q. What depositions?

18 A. The one with Liggett & Meyers that I
19 referred to earlier today in early 1980s, I believe it
20 was. In addition to that, more recently I have
21 prepared for a deposition with the Department of
22 Justice.

23 Q. When do you -- when did you prepare
24 for that?

25 A. I prepared for that within the past

144

1 month.

2 Q. Are you presently scheduled to give
3 deposition in that case?

4 A. I have not given a deposition. I
5 don't know what you mean by scheduled. I don't have a
6 date in which to give a deposition, no.

7 Q. Have you reviewed documents for
8 purposes of giving a deposition in that case?

9 A. Yes, I have.

10 Q. And did any of those documents
11 involve Viceroy's?

12 MR. ERNY: Again, I'm going to have
13 the same objection to the extent that if she did rely
14 on those and she utilizes that review in answering

15 your questions today, I think it's fair game, but just
16 an outright question about did you review any Viceroy
17 documents, I'm, I'm not willing to waive work product
18 privilege there.

19 Q. How many ads have you seen --
20 THE COURT REPORTER: How many what?
21 MR. BERNEY: Ads. That's my
22 Philadelphia accent.

23 Q. (By Mr. Berney) How many ads have
24 you seen that incorporates either the tension release
25 campaign, the satisfaction campaign, or the feels good
145

1 campaign?

2 A. I don't recall specifically. I only
3 saw them in the context of that one document I
4 referred to, and I believe there was only one or two
5 examples at the most, of each of those attached to
6 that document, that I recall.

7 Q. And you saw ads for each particular
8 campaign?

9 A. I believe so, yes.

10 Q. I think I asked you how long the
11 tension release campaign and the satisfaction campaign
12 and the feels -- or the feels good campaign were test
13 marketed, and I think your response was I don't know.
14 My, my follow-up question to that is, do you know what
15 year these particular campaigns may have ended?

16 A. No, I don't.

17 Q. Do you know what year they may have
18 started?

19 A. No, I don't.

20 Q. On any of the ads that you reviewed,
21 were any of them dated?

22 A. I don't recall.

23 Q. Do you know why these campaigns were
24 no longer test marketed?

25 A. My understanding was that these
146

1 campaigns were never approved from Brown & Williamson
2 to be test marketed to begin with, and Brown &
3 Williamson, as a result, asked that they be -- when
4 they found out that they were being test marketed,
5 asked that they stop, be stopped, is my understanding.

6 Q. Does that come from a particular
7 document?

8 A. It comes from, from my discussion
9 with attorneys regarding a particular document.

10 Q. Does it come from any other source
11 other than that?

12 A. No.

13 Q. Based upon your understanding of the
14 tension release campaign, do you think that campaign
15 was unethical in any type of way?

16 MR. ERNY: Objection.

17 A. I can't recall the differences in
18 these three campaigns. I -- if you could show me some
19 ads I'd be happy to look at them again, but I don't
20 recall the differences in any of these. I just recall
21 seeing this words in a document.

22 Q. So what you're saying is -- and
23 correct me if I'm wrong. I don't want to misstate your
24 testimony -- it's impossible for you to give an
25 opinion regarding the ethics of running these

1 particular campaigns because you don't remember any of
2 the particular advertisements incorporating these
3 particular campaigns?

4 MR. ERNY: Objection.

5 A. I stated -- as I stated, I don't
6 remember what these campaigns looked like.

7 Q. Okay.

8 A. I remember seeing these words in a
9 document, and I believe there were ads attached to it,
10 showing what they looked like, but I don't recall what
11 they looked like.

12 Q. That answers -- that answers my
13 question. The, the document that you saw, do you know
14 if that document was ever made public?

15 A. I don't know.

16 Q. Any of the documents that you
17 reviewed for preparing for any of the -- preparing for
18 any of these depositions, do you know if any of those
19 documents were ever made public?

20 A. I don't know.

21 Q. Do you know, or have you seen any
22 documents that talk about Brown & Williamson
23 experiencing any type of embarrassment over either the
24 document that we've marked as Plaintiffs' Exhibit 4,
25 or any of the documents that you've reviewed preparing

148

1 for depositions?

2 A. No.

3 Q. What other types of advertising
4 themes did, did Brown & Williamson run in the '70s
5 regarding Viceroys?

6 A. My recollection, looking at
7 historical ads, Brown & Williamson ran lots of
8 different advertising campaigns -- I would call, call
9 themes, I interpret to mean --

10 Q. Okay.

11 A. -- campaigns, during the 1970s. I
12 can't recall specifically what, what they were, but I
13 do recall seeing various campaigns.

14 Q. Let's, let's limit the time period
15 from, let's say, '76 to 1980. Do you know what other
16 types of advertising campaigns Brown & Williamson ran
17 during that particular time period?

18 A. Specific to Viceroy?

19 Q. Yes.

20 A. Specific to Viceroy. I believe
21 during that time period we also ran the race car
22 campaign. I believe it was during that time that we
23 had the Viceroy race car, we had the racing campaign.

24 Q. Anything else?

25 A. During that specific time period,

149

1 I'm not real familiar with the dates, so I'm not
2 really sure.

3 Q. Do you know -- I don't know the
4 organizational structure, but during this particular
5 time period, '75 to '80, is there some individual who
6 would be in charge of all marketing practices during
7 that time period?

8 A. I'm not sure what you mean by all
9 marketing practices.

10 Q. Was there a vice president in charge

11 of marketing at that time?
12 A. Yes, I'm sure there was.
13 Q. And would that person directly
14 report to the CEO, or was there some intermediary
15 person who the vice president of marketing would
16 report to first?
17 A. I'm not sure during that time
18 period, but typically the vice president of marketing,
19 if there was just a vice president of marketing, would
20 report to a senior vice president of marketing, who
21 then typically reports to the CEO. There for some
22 period of time we also had a president of the company
23 to whom the senior vice president of marketing
24 reported to. The president of the company then
25 reporting to the CEO.

150

1 Q. From, let's say, 1975 to 1980, do
2 you know who would have been the vice president of
3 marketing?
4 A. I don't recall during that time
5 period.
6 Q. Same question with regard to senior
7 vice president of marketing -- marketing during that
8 time period, 1975 to 1980, do you know who that person
9 would have been?
10 A. I don't recall specifically names
11 during that time period.
12 Q. How about the CEO during that
13 particular time period?
14 A. I believe that -- I'm not sure. I
15 believe that may have been Ray Prichard, but I'm not
16 sure.
17 Q. Was Wally Hughes at some point a
18 CEO?
19 A. Yes, he was.
20 Q. And generally what was the time
21 period during which he was the CEO?
22 A. I don't remember exactly. I, I
23 believe Doctor Hughes was the CEO early in my career
24 at Brown & Williamson, which was in the mid-'70s. So
25 he may have been the CEO at that time.

151

1 Q. What was his background?
2 A. He had a research background.
3 Q. And what was Ray Prichard's
4 background?
5 A. I don't know.
6 Q. Do you know who -- have you ever
7 heard the name Russ Stewart?
8 A. Russ Stewart. Not that I recall.
9 Q. Stewart is spelled S-t-e-w-a-r-t.
10 A. No, not that I recall.
11 Q. Have you ever heard his name in the
12 context of anything involving marketing?
13 A. I don't recall his name.
14 Q. Currently what do you consider the
15 demographical characteristics of a Viceroy smoker to
16 be?
17 A. I'm not familiar with what they are
18 currently. My -- I'm not totally familiar with it.
19 My understanding of a Viceroy smoker today is a smoker
20 who's interested in a -- what we call a Value brand, a
21 Value proposition, a product that is less expensive

22 than a premium brand like Marlboro.
23 Q. Anything else in terms of
24 demographical characteristics for the Viceroy smoker,
25 currently?

152

1 A. Not that I know of.
2 Q. How long has that been the case for,
3 for Viceroy, in terms of the demographical
4 characteristic that you just articulated?
5 A. Oh, I'm familiar with that being the
6 case since the brand -- since right before the brand's
7 eye price was lowered to a value for money price. So
8 I would have to estimate how many years, but I would
9 estimate within the past ten years or so.
10 Q. And then prior to that, so we're
11 talking now prior to 1990, thereabouts --
12 A. Uh-huh.
13 Q. -- what would you say would be the
14 profile for the Viceroy smoker?
15 A. My recollection back when I first
16 went into the brand management group when I was
17 working on various brands of some of the -- including
18 Viceroy -- was that the profile of the Viceroy smoker
19 was an older consumer; I believe it was both male and
20 female. That's all I recall of the profile.
21 Q. So about fifty percent male and
22 fifty percent female --
23 A. I don't recall the --
24 Q. -- thereabouts?
25 A. -- percentages. I just don't --

153

1 Q. They --
2 A. -- recall it being skewed one way or
3 the other.
4 Q. When you say older, can you tell me
5 what sort of age you're talking about?
6 A. Well, within the company we
7 generally refer to old -- or I refer to older
8 consumers as being over fifty.
9 Q. Was there a particular income level
10 that you associated with a Viceroy smoker?
11 A. Not that I recall.
12 Q. Was there a particular educational
13 level that you associated with the Viceroy smoker?
14 A. Not that I recall.
15 Q. Was there a particular racial
16 characteristic that you associated with the Viceroy
17 smoker?
18 A. No, not that I recall.
19 Q. Was there a particular number of
20 packs per day that the Viceroy -- that the Viceroy
21 smoker smoked?
22 A. I don't recall seeing that
23 information.
24 Q. This notion of the Viceroy smoker
25 being older, meaning over fifty, and not necessarily

154

1 being -- not necessarily predominating male or female,
2 one way or the other, how long was that the case for?
3 A. I don't know.
4 Q. Do you know if the characteristics
5 were different, let's say, in the '50s versus the '60s
6 for the Viceroy smoker?

7 A. I don't know.
8 Q. In the, in the '50s, do you know
9 what kind of people smoked Viceroy; what kind of
10 profile there was for, for the Viceroy smoker in the
11 '50s?
12 A. No, I don't recall seeing that
13 information.
14 Q. Same question for the 1960s. What
15 was the profile of the Viceroy smoker?
16 A. I don't know.
17 Q. And the same question for the '70s,
18 what was the profile of a Viceroy smoker?
19 A. Again, I don't recall seeing that.
20 Q. In the 1980s, what was the profile
21 of a Viceroy smoker?
22 A. I don't recall.
23 Q. Have you ever smoked a Viceroy
24 cigarette?
25 A. No, I haven't.

155

1 Q. At any time have you done any
2 historical reviews of Viceroy advertising?
3 A. Yes, I have.
4 Q. And when did you do those reviews?
5 A. In preparation for this case.
6 Q. Other than that?
7 A. Not that I recall, no.
8 Q. Other than in preparing for this
9 case, have you done any historical reviews of
10 marketing strategies for Viceroy cigarettes?
11 A. Not that I recall.
12 Q. In terms of the documents that you
13 reviewed for preparation of this case, did any of the
14 documents that you reviewed talk about cigarettes
15 being addictive?
16 A. I reviewed documents that spoke of
17 addiction and the definition of addiction.
18 Q. What document are you referring to?
19 A. I'm referring to a document that was
20 the written documentation that our chairman Tommy
21 Sandifer submitted after his Congressional hearing.
22 Q. Anything else in terms of documents
23 that refer to addiction?
24 MR. ERNY: Just for clarification,
25 are you referring to something other than your

156

1 complaint?
2 MR. BERNEY: Yes.
3 MR. ERNY: By documents, do you mean
4 Brown & Williamson documents?
5 MR. BERNEY: I mean anything other
6 than, than plaintiffs' complaint.
7 MR. ERNY: Any -- anything other
8 than the complaint. Okay.
9 A. I don't recall other documents.
10 Q. Do you understand that nicotine is
11 frequently the substance in tobacco that people target
12 as having addictive qualities?
13 A. That's my understanding, yes.
14 Q. Do you believe that it would be
15 unethical to market a cigarette which increases the
16 physiological effect of nicotine without disclosing
17 that to the smoker?

18 MR. ERNY: Objection.
19 A. Could you say the question again,
20 please.
21 Q. Sure. Do you think that it would be
22 unethical to market a cigarette to smokers which
23 increases the physiological effect of the nicotine
24 without disclosing that to the smoker?
25 MR. ERNY: Objection.

157

1 A. I don't understand increasing the
2 physiological effect of nicotine. I'm sorry.
3 Q. Do you understand that nicotine has
4 a physiological effect?
5 A. Yes.
6 Q. So do you think then that it would
7 be unethical to market a cigarette which -- in which
8 things are done to the cigarette to increase that
9 physiological effect?
10 MR. ERNY: Objection.
11 A. Are we speaking hypothetically,
12 because I'm not aware of any of that --
13 Q. Yes --
14 A. -- ever occurring?
15 Q. -- hypothetically.
16 MR. ERNY: Objection.
17 Q. Hypothetically speaking?
18 A. If there were any documents that
19 talked about anything being done to increase the
20 physiological effects of nicotine, I do believe that
21 would be unethical.
22 Q. Why?
23 A. Because my understanding, from what
24 you're asking, is that if that something was done
25 deliberately to increase the effects of, of the

158

1 nicotine --
2 Q. That that would be --
3 A. -- and that would be unknown to the
4 public at large or to consumers. That's my
5 understanding of what you're asking.
6 Q. Yes.
7 A. And I believe that that's not
8 ethical.
9 Q. Do you know if Brown & Williamson
10 ever did that?
11 A. Not that I know of.
12 Q. Have you ever heard the term
13 freebase nicotine?
14 A. No, I've not heard the term
15 freebasing used in conjunction with nicotine, no.
16 Q. Specifically focusing in on Viceroy
17 advertising, what has been -- and, and if this term is
18 incorrect, please correct me on this. But what has
19 been the general theme or themes for how Viceroy
20 cigarettes have been advertised over the years?
21 A. Advertisements that I've reviewed,
22 there have been multiple different themes, or what you
23 call themes, I call campaigns, for which Viceroy's have
24 introduced over the years. The earliest I recall
25 reviewing has to do with the filter tip itself. I

159

1 recall seeing various advertisements regarding
2 Viceroy's filter, as well as seeing advertisements

3 regarding the race car, and advertisements regarding
4 the thinking man's smoke or cigarette, I believe.
5 Q. Anything else?
6 A. Not that I recall, but I remember
7 seeing a lot of different advertising.
8 Q. Why so many different
9 advertisements; is that unusual? That's a compound
10 question, so if you want to --
11 A. I don't know why so many different
12 advertisements, but that's not unusual. Typically
13 when a brand is, is not performing as well as the
14 brand group or the brand manager, or the company,
15 things that brand should be performing, oftentimes
16 advertising campaigns are changed. So it's not that
17 unusual to change advertising campaigns frequently.
18 Q. When was Viceroy first manufactured?
19 A. I believe in the -- 1936 or the
20 mid-1930s.
21 THE COURT REPORTER: Just a second.
22 (Whereupon, a short pause was
23 taken.)
24 MR. ERNY: If you are getting into a
25 new area, would that be a good time to take a break?
160
1 MR. BERNEY: That's fine.
2 (Whereupon, a short recess was
3 taken.)
4 THE VIDEOGRAPHER: Okay.
5 MR. BERNEY: Why don't we mark this
6 as Plaintiffs' Exhibit 5; it's a 1936 advertisement
7 announcing Viceroy.
8 THE COURT REPORTER: Did you say 5
9 or 6?
10 MR. ERNY: Five.
11 MR. BERNEY: Five.
12 (Whereupon, the hereinabove referred
13 to document was marked Plaintiffs' Exhibit Number 5,
14 and attached hereto.)
15 Q. Have you ever seen that document
16 before?
17 (The document is handed to the
18 witness.)
19 A. Yes, I think so.
20 Q. Is that a -- do you know if that was
21 a document that was published nationwide by Brown &
22 Williamson, announcing Viceroy cigarettes?
23 A. I don't know. I believe so.
24 Q. When did you see that document?
25 A. In reviewing documents in
161
1 preparation for this case.
2 MR. BERNEY: We're going to mark
3 another document as Plaintiffs' Exhibit Number 6, and
4 it appears to be a chronology summarizing the various
5 ad campaigns that were used for Viceroy.
6 (Whereupon, the hereinabove referred
7 to document was marked Plaintiffs' Exhibit Number 6,
8 and attached hereto.)
9 (The document is handed to the
10 witness.)
11 Q. Could you take a look at that
12 document, please.
13 MR. ERNY: Can we go off the record?

14 MR. BERNEY: Sure.
15 (Whereupon, a discussion was held
16 off the record.)
17 MR. BERNEY: We can go back on.
18 MR. ERNY. Mr Berney and I have
19 reached an agreement that due to the fact that I'm not
20 certain as to the status of this document, that his
21 questioning the witness will not be construed or
22 utilized by him as supporting an argument of a waiver
23 of the privilege.
24 MR. BERNEY: And, and just, just to
25 build onto that, it's our position that this document
162
1 is certainly not privileged, especially because it was
2 posted by Brown & Williamson on the website and it was
3 printed off the website.
4 MR. ERNY: And, and to the extent
5 that we may one day have to fight that out, we will.
6 I just want to make sure that we have an agreement
7 that you're utilizing it today will not be argued by
8 you as, as a waiver of the privilege to the extent
9 there is one there.
10 MR. BERNEY: That -- that's agreed.
11 MR. ERNY: Okay.
12 Q. Have you ever seen what we've now
13 marked as Plaintiffs' Exhibit 6 before?
14 A. I don't recall ever seeing this, no.
15 Q. Do you think that this document
16 accurately describes and summarizes the various
17 Viceroy advertising campaigns that were used from 1950
18 through 1956?
19 A. I'm not sure. In order to reply to
20 that question I would have to look at the specific ads
21 and compare. I don't recall from the top of my head
22 if all these ad campaigns did, in fact, run on these
23 particular dates.
24 Q. Do you see -- looking at this
25 document, do you see anything that you can target as
163
1 being incorrect?
2 A. I don't -- I would have to then read
3 the entire document. Would you like me to take the
4 time to do that?
5 Q. No.
6 A. Okay.
7 Q. No, leave that at a later time.
8 Looking at the 1951, that 1951 first page --
9 A. Uh-huh.
10 Q. -- where it says "Filtered Cigarette
11 Smoke is Better for Your Health." Do you recall that
12 as being a campaign that was run for Viceroy
13 cigarettes?
14 MR. ERNY: Let me just object. The
15 questions about this ad and any ad up to 1954 are
16 outside the scope of the deposition. Subject to
17 that -- subject to that objection, you can answer the
18 question. I believe the notice refers to the time
19 period 1955 through 1996.
20 MR. BERNEY: And just the -- so the
21 record is clear, category number 3 of the notice of
22 deposition, deposition talks about the preparation and
23 approval of advertising materials related to the sale
24 of Viceroy cigarettes, including those referenced in

25 plaintiffs first and second set of interrogatories, 164
1 and I think that encompasses questions regarding these
2 particular questions.
3 Q. (By Mr. Berney) Okay. To ask the
4 question again. Do you recall ever seeing a Viceroy
5 advertising campaign that talks about filtered
6 cigarette smoke being better for your health?
7 A. I would need to see the actual
8 campaigns themselves. I don't recall the words so
9 much as I do the camp -- the pictures and the ads
10 themselves.
11 Q. Okay. Looking at 1952, do you
12 recall an advertisement that said something along the
13 lines of a "Leading New York Doctor Tells his Patients
14 What to Smoke"?
15 A. I don't recall if it was 1952. I do
16 recall seeing a Viceroy ad that did have something
17 about a leading New York doctor. That's all that I
18 recall.
19 Q. Do you know who that doctor would
20 have been?
21 A. No, I do not.
22 Q. Do you recall ever seeing something
23 along the lines of "Prominent Physician Tells
24 Patients, Smoke Viceroy Filter?"
25 A. I don't recall that specifically. 165
1 Q. The term prominent physician, would
2 you know who that might refer to?
3 A. No, I don't.
4 Q. Looking at the second page of this
5 document that we've now marked Plaintiffs' Exhibit 6,
6 under 1952, it says, "Health was the key word in other
7 1952 advertising of Viceroy cigarettes." Do you know if that's
8 the case, whether or not health was a key word in
9 advertising for Viceroy cigarettes?
10 A. I don't know what is meant by a key
11 word.
12 Q. Do you know whether or not the theme
13 of health was something that Viceroy cigarettes were
14 adverat -- were advertised around?
15 MR. ERNY: Objection.
16 A. I wouldn't recall anything in terms
17 of the theme of health. I do recall -- recall
18 specifically seeing ads regarding the new health-guard
19 filter.
20 Q. On that same page they talk about
21 the claim Viceroy being better for your health and
22 having it supported by -- and it puts this in
23 quotation marks -- "facts." Do you see that section?
24 The bottom of the page.
25 A. These claims were supported by 166
1 facts?
2 Q. Yes.
3 A. Yes, I see that section.
4 Q. And then it goes on and it lists
5 three, quote, unquote, "facts." Would you just take a
6 moment to read that.
7 A. Uh-huh. Okay.
8 Q. Other than what's listed here, do
9 you know of any other supports for the claim that

10 Viceroy's are supposed to be better for your health?
11 A. No, I don't.
12 Q. Do you recall the advertising
13 campaign, double-barreled health protection?
14 A. Yes, I do recall that in an
15 advertising campaign for Viceroy.
16 Q. Flipping to the next page, we're
17 actually now on page 4. Do you recall the campaign
18 that talks about Viceroy cigarettes being safer for
19 the throat and safer for the lungs?
20 A. Are you referring to the top
21 paragraph?
22 Q. Yes.
23 A. I don't recall that specific
24 advertisement.
25 Q. When any Viceroy advertisement
167
1 referenced a physician or a doctor as endorsing
2 Viceroy cigarettes, or saying smoke Viceroy
3 cigarettes, do you know any of those doctors to which
4 the advertisements are referring?
5 A. No, I don't.
6 Q. Do you know who would?
7 A. No, I don't.
8 Q. Do you know if there are documents
9 that specifically indicates or cite any of these
10 particular doctors or physicians?
11 A. I don't know of any.
12 Q. Do you know of any Viceroy documents
13 have been destroyed to prevent their release to the
14 public or discovery to the public?
15 A. Not that I know of.
16 Q. Do you know if any documents that
17 reference Viceroy cigarettes have been shipped
18 overseas so that some third party wouldn't discover
19 them?
20 A. Not that I know of.
21 Q. Do you know generally whether or not
22 Brown & Williamson had a policy whereby they would
23 ship documents overseas so that third parties wouldn't
24 discover them?
25 MR. ERNY: Objection.
168
1 A. I'm not aware of that at all.
2 Q. Are you aware of an ad campaign that
3 referenced the new miracle filter that was part of the
4 Viceroy cigarette?
5 A. I don't recall the words miracle
6 filter.
7 Q. Have you heard of Estron,
8 E-s-t-r-o-n, material?
9 A. Yes, I have heard of that.
10 Q. And what's your understanding of
11 Estron material?
12 A. I don't know what that is. I
13 believe it's something used in a filter.
14 Q. Have you ever heard new miracle
15 filter of Estron material?
16 A. I haven't used -- I don't remember
17 hearing the words miracle filter.
18 (Whereupon, the hereinbelow referred
19 to document was marked Plaintiffs' Exhibit Number 7,
20 and attached hereto.)

21 Q. I'm going to show you another
22 document that's entitled Viceroy Agency Orientation
23 Outline, which we have marked as Plaintiffs' Exhibit
24 7.
25 (The document is handed to the
169 witness.)

1 witness.)
2 Q. Why don't you take a moment to --
3 A. Okay.
4 Q. -- to review it?
5 MR. BERNEY: We can go off while
6 she's reviewing it.
7 (Whereupon, a short pause was
8 taken.)

9 THE COURT REPORTER: Okay.
10 Q. I'm, I'm going to ask you specific
11 questions about page -- pages 11 and 12, so when we
12 get to those if you could actually read through those.
13 (COURT REPORTER'S NOTE: Not on
14 video, the last remarks.)

15 A. Okay.
16 Q. Have you reviewed the entire
17 document that we marked as Plaintiffs' Exhibit 7,
18 which is entitled Viceroy Agency Orientation Outline?
19 A. Yes, I have.
20 Q. And have you specifically read pages
21 11 and 12 of that particular document?
22 A. Yes, I have.
23 Q. Have you ever seen this document
24 before?
25 A. No, I haven't.

170

1 Q. Do you know who the author of this
2 particular document is, by any chance?
3 A. No, I don't, no, sir.
4 Q. Do you have a sense when this
5 document was drafted, based on anything that you read?
6 A. Based on what I read on page 2 it
7 appears this was written probably around 1976 because
8 they're asking for something back from the agency by
9 September of 1976.

10 Q. On page 2 it mentions B & W's
11 contact as being Gerry Reid, R-e-i-d, E. A. (Ack), and
12 that's not my accent, (Ack), in parentheses, Willets,
13 the Third. Willets is W-i-l-l-e-t-s, and Carter
14 Broach. We've already talked about Carter Broach.
15 I've already asked you questions about Carter Broach.
16 Do you recognize any of the other two individuals?
17 A. Yes, I recognize Gerry Reid and Ack
18 Willets.

19 Q. And who are these individuals?
20 A. They were both in the marketing
21 department during this time frame in the '70s. I
22 don't -- I didn't know them much more than to know
23 that they were both in the marketing department.
24 Q. Do you know if they're still at
25 Brown & Williamson?

171

1 A. No, they're not.
2 Q. Do you know whether or not they're
3 still alive?
4 A. I don't know on Gerry Reid. The
5 last I heard Ack Willets was still alive, yes.

6 Q. Do you know where Ack Willets is; is
7 he in Louisville, do you know?
8 A. The last I heard he was working at
9 Brown-Forman in Louisville.
10 Q. And when did you hear that?
11 A. Probably two or three years ago.
12 Q. How old would he be now,
13 approximately?
14 A. I'm terrible with ages. I would say
15 early fifties, perhaps.
16 Q. Brown, Brown-Forman?
17 A. Brown-Forman.
18 Q. Is that one word, or two words?
19 A. Two words.
20 Q. And Forman is F-o-r-m-a-n?
21 A. I believe so.
22 Q. And what type of company are they?
23 A. It's a liquor company.
24 Q. And that's in Louisville, you said?
25 A. Yes.

172

1 Q. Specifically focusing in on pages 11
2 and 12 of this particular document, it provides a
3 summary of historical Viceroy positioning and
4 campaigns; is that correct?
5 A. Yes.
6 Q. And are the summaries accurate?
7 A. I don't know for sure that -- I have
8 no reason to believe that they're not. I don't know.
9 Q. Do you have any sense why this
10 doc -- based on your background in marketing,
11 especially with Brown & Williamson, do you have any
12 sense why this particular document was drafted; what's
13 its purpose?
14 A. From what I can tell, in reading
15 this document, it appears to me that Brown &
16 Williamson was looking for some -- what we call an
17 agency shoot-out on creative.
18 Q. And can you explain to me what an
19 agency shoot-out is on creative?
20 A. Yes. Generally when a company is
21 not satisfied with the creative that they have from a
22 particular agency, for whatever reason, they from time
23 to time ask that agency, as well as other agencies, to
24 develop creative campaigns.
25 Q. And you have a sense that's what's

173

1 going on with regard to this particular document?
2 A. I don't know that for a fact, but it
3 appears that that's what's going on.
4 Q. Could it be then that this document
5 is sort of a lead up to the various campaigns that we
6 discussed before, regarding tension release,
7 satisfaction, and feels good?
8 A. I don't know that.
9 Q. Does that make sense?
10 MR. ERNY: Objection.
11 A. I don't know.
12 Q. You wouldn't dismiss it, though?
13 A. I wouldn't know one way or the
14 other.
15 Q. And sitting here today, based on
16 what you've read on pages 11 and 12, do you have any

17 information that would lead you to disagree with any
18 of the characterizations with how Viceroy was
19 advertised as referenced in, in this document?
20 MR. ERNY: Let me object to that.
21 A. Are you asking do I have any
22 information that would state that this is not factual?
23 Q. Correct.
24 A. No, not that I know of.
25 Q. Viceroy -- was Viceroy originally

174

1 positioned as a health cigarette?
2 A. I don't know what you mean by a
3 health cigarette.
4 Q. Let me show you what we will mark as
5 Plaintiffs' Exhibit 7.
6 A. This is 7.
7 Q. Then I apologize. It's Plaintiffs'
8 Exhibit 8.
9 THE COURT REPORTER: Can we go off
10 the record a minute?
11 MR. BERNEY: Absolutely.
12 (Whereupon, a short recess was
13 taken.)
14 Q. All right, showing you what we're
15 going to mark as Plaintiffs' Exhibit 8, it consi -- it
16 appears to consist of four boxes on the page which
17 have separate types of advertisements for Viceroy.
18 MR. BERNEY: Could you mark that as
19 Plaintiffs' Exhibit 8. We're going to need more
20 Plaintiffs' stickers.
21 (Whereupon, the hereinabove referred
22 to document was marked Plaintiffs' Exhibit Number 8,
23 and attached hereto.)
24 (The document is handed to the
25 witness.)

175

1 Q. Have you ever seen that document
2 before?
3 A. Yes, I have.
4 Q. And do you know if those are
5 particular advertisements that were run by Brown &
6 Williamson at some point?
7 A. I believe they were, yes.
8 Q. Do you know when they were run?
9 A. I don't know the exact date. I
10 believe it was in -- it appears here it was in 1936,
11 but I believe it was around that time period.
12 Q. In one of them, it's the -- the
13 bottom left-hand box, it says filter guards -- filter
14 guards teeth and throat. Do you know what that
15 references?
16 A. I'm trying to read the small type.
17 MR. ERNY: Excuse me. We reviewed a
18 larger set of these same exhibits and provided them to
19 you. Since she's looking to look at the fine print,
20 can I hand her a copy and let her look at it so she
21 can see it?
22 MR. BERNEY: Absolutely.
23 A. My eyes aren't as good as they used
24 to be.
25 (The document is handed to the

176

1 witness.)

2 A. Thank you. The -- I'm sorry. You
3 were, were referencing the filter guards teeth and
4 throat?

5 Q. Exactly.

6 A. And your question specifically was?

7 Q. Well, let me ask you this. What
8 does that mean, filters -- filter guards teeth and
9 throat; what does that mean exactly?

10 A. What I interpret that to mean, from
11 looking at this ad, is that because it has a filter on
12 it, that the tobacco itself doesn't get in your mouth
13 or doesn't get in your teeth. It talks specifically
14 in the ad about how the filter keeps the tobacco from
15 getting into your mouth and your teeth.

16 Q. If that is not correct, would this
17 be an example of false advertising?

18 MR. ERNY: Objection.

19 A. If you were to assume that that
20 filter did not keep the tobacco from your mouth or
21 your, your teeth?

22 Q. Yes.

23 A. Then that would be false
24 advertising.

25 Q. Now, on the top left-hand corner it
177
1 says, "Safer smoke for any throat." Do you understand
2 what that means?

3 A. Yes, my understanding of that means
4 that because Viceroy has a filter, that it's safer
5 than cigarettes that do not have a filter, as it goes
6 on to explain in that because of the filter.

7 Q. Do you know if that -- do you know
8 if that's true?

9 A. From all evidence I've heard or seen
10 from all public knowledge that was out during this
11 time period and since that time period, it seemed to
12 be public knowledge at the time that a filter did -- a
13 cigarette with a filter was safer than a cigarette
14 without a filter in terms of preventing certain
15 aspects of the cigarette smoke getting into your mouth
16 or to your throat.

17 Q. Safer in -- safer in what context?
18 I'm not quite certain I understand what you mean.

19 A. In the context if when -- if you
20 have a filter, then there are certain aspects of the
21 cigarette smoke, such as tar or nicotine that cannot
22 get through the filter into your mouth or throat. So
23 you're better off having the filter there to trap some
24 of that from getting into your mouth.

25 Q. Was it because the tar and nicotine
178
1 wasn't good for a person health-wise?

2 MR. ERNY: Objection.

3 Q. You can answer.

4 A. I'm not a scientist. I don't know
5 what tar and nicotine specifically does, but public
6 knowledge back at that time, and, and since that time,
7 was that it was better to be able to filter the tar
8 and nicotine through some sort of filter as opposed to
9 not having a filter and just smoking a cigarette
10 without a filter.

11 Q. Because the tar was harmful to the
12 health; is that why?

13 A. That was the public knowledge at the
14 time, yes. That's what I understand.

15 Q. When you refer to public knowledge
16 at the time, are there any specific sources that
17 you're thinking of?

18 A. I can think of several sources.
19 Reader's Digest sources them; the Surgeon General's
20 report; different sources, plus just -- I mean I
21 recall just -- I, I wasn't growing up in 1936, but
22 when I -- as I was growing up I just recall people
23 knowing generally about filtered cigarettes being
24 better for you than non-filtered cigarettes.

25 Q. All right, you reference a Reader's,
179

1 Reader's Digest report, or reports?

2 A. I've seen more than one Reader's
3 Digest report.

4 Q. That's specifically talking about
5 filter cigarettes being better for somebody's health?

6 A. I recall seeing a Reader's Digest
7 report that talked about our -- I don't remember the
8 exact title of the article, but referenced filters
9 themselves, the benefits of filters, yes.

10 Q. And it talks about filters being --
11 making the cigarette safer for the individual smoker?

12 A. I don't know if it uses those words
13 exactly. I do recall it talking about filters being
14 better in terms of filtering out some of the tar and
15 nicotine, yes.

16 Q. With the implication being that that
17 means it's safer for a person?

18 A. Safer for a person than cigarettes
19 that do not have the filter, yes.

20 Q. Do you know the year on any of those
21 Reader's Digest articles?

22 A. I know there was one Reader's Digest
23 article that came out around 1950, and another, I
24 think, in the mid- to late '50s I'm familiar with.

25 Q. The one from 1950, thereabouts, was
180

1 that by a fellow by the name Riis, R-i-i-s?

2 A. I don't know.

3 Q. Any other articles, Reader's Digest
4 articles, that you're referring to --

5 A. I --

6 Q. -- specifically on this topic?

7 A. I refer to the one that was in the
8 later '50s sometime.

9 Q. Other than those two.

10 A. Not that I'm aware of.

11 Q. Any other written sources for why
12 filter cigarettes would be safer, other than the two
13 Reader's Digest articles that you just mentioned and
14 perhaps the Surgeon General's report?

15 A. I don't recall specific reports, no.

16 Q. Do you recall any documents that
17 mention filter cigarettes as being safer for the
18 individual smoker around 1936 when these particular
19 ads, that are referenced in Plaintiffs' Exhibit 8,
20 were run?

21 A. No, I don't recall specific
22 documents in that time period.

23 Q. Do you know any documents from

24 around this time period that was used as a source for
25 making the claim in 1936 that Viceroy cigarettes

181

1 provide a safer smoke?

2 A. No, I'm not aware of any documents
3 in that time period.

4 Q. If they weren't any documents from
5 that time period, would it be false to say that, that
6 filter cigarettes are safer for somebody's throats?

7 MR. ERNY: Objection.

8 A. I wouldn't interpret that as being
9 false in the context of what this, this particular ad
10 says, in terms of a filter meaning -- what they said,
11 a safer smoke for any, any throat, was that no
12 tobacco's in the mouth or teeth, that the throat --
13 that the filter prevents the tobacco from getting in
14 your mouth and teeth. To me, that was the explanation
15 they were using there. I don't interpret that as
16 being false.

17 Q. But it's specifically saying it's
18 safer for the throat.

19 A. Yes, it does.

20 Q. And if it's not safer for the
21 throat, then there's no -- let, let me restate that.

22 If there's no evidence at that time
23 period to support that it's safer for the throat,
24 would you then consider that an example of false
25 advertising?

182

1 MR. ERNY: Objection.

2 A. I would only consider that false
3 advertising if there were evidence to the contrary
4 that the filtered cigarette was not safer to the
5 throat.

6 Q. Suppose for a moment that there's
7 no evidence to support the fact in 1936 that Viceroy
8 filter cigarettes are safer for the throat. Would
9 running this type of ad be unethical?

10 MR. ERNY: Objection.

11 A. I don't view it as being unethical,
12 again, because I am not aware of any evidence that is
13 to the contrary to what they're saying in this ad.

14 Q. Suppose there's no evidence contrary
15 and no evidence for it, would be unethical to run an
16 ad that says Viceroy cigarettes are safer for one's
17 throats?

18 MR. ERNY: Objection.

19 Q. You can answer.

20 A. Again, I don't see it as being
21 unethical because the way I interpret the ad, I
22 believe it's factual.

23 Q. And what part is -- you're saying
24 that it's factual that Viceroy cigarettea are safer
25 for the throat?

183

1 A. Because my interpretation of that is
2 based on what the additional copy in the ad, which
3 says that it's safer for your throat; filter tip
4 cigarette; no tobaccos in your mouth or teeth; throat
5 irritation checked; true flavor of choice Turkish
6 tobaccos brought to you. I don't see anything in that
7 ad, to me, that I would interpret as being unethical.

8 Q. Do you know how this particular ad

9 came into being, the, the four ads referenced on
10 Plaintiffs' Exhibit 8?
11 A. No, I don't know how specifically it
12 came into being, no.
13 Q. Do you know if Brown & Williamson
14 would have been the one that came up with these ideas,
15 or whether or not another -- an ad agency would have
16 come up with these particular ideas?
17 A. I don't know.
18 Q. Do you know who the ad agency was
19 for Brown & Williamson at this time?
20 A. I don't know who the ad agency was
21 in 1936, no.
22 Q. During this early period, when
23 Viceroy was advertised, who -- was it Ted Bates that
24 was generally responsible for the, for the Viceroy
25 advertising, along with Brown & Williamson?

184

1 A. I know that Ted Bates was the ad
2 agency responsible for Viceroy in the '50s. I don't
3 know how much prior to that or when prior to that Ted
4 Bates was actually the ad agency for Brown &
5 Williamson. I don't know when they became the ad
6 agency for Viceroy.
7 Q. Was Ted Bates the exclusive agency
8 for Viceroy advertising from, let's say, the
9 '50s to somewhere in the '70s or beyond?
10 A. They were, to my -- the best of my
11 knowledge, they were the exclusive agency from the
12 '50s until sometime I believe in the '70s or '80s,
13 yes.
14 Q. I'm sorry. Did you say the
15 exclusive agency, or were there other agencies
16 responsible for advertising Viceroy from the '50s to
17 the '70s and perhaps even a little bit later on?
18 A. Not that I'm aware of.
19 MR. BERNEY: Why don't we mark this
20 as Plaintiffs' Exhibit 9, and this is a advertisement
21 out of The Saturday Evening Post labeled, Viceroy, the
22 Tip is a Filter.
23 (Whereupon, the hereinabove referred
24 to document was marked Plaintiffs' Exhibit Number 9,
25 and attached hereto.)

185

1 (The document is handed to the
2 witness.)
3 Q. Have you ever seen that ad before?
4 A. I don't recall if I've seen this
5 particular ad. I've seen similar ads to this.
6 Q. It says, "your smoke comes clean" in
7 the middle of the particular advertisement?
8 A. Yes.
9 Q. Do you know what that means?
10 A. The way I interpret that, it's your
11 smoke is cleaner because it has a filter tip on it as
12 opposed to a cigarette that doesn't have a filter tip.
13 Q. What does it mean cleaner?
14 A. To me it means many of the -- or
15 what it -- asterisks here with the little stars,
16 cleaner because the tobacco could does not get into
17 your mouth. Cleaner because it, as they say, "Checks
18 throat-irritants." Cleaner because it brings you true
19 tobacco flavor.

20 Q. Do you understand the ad to say the
21 smoke comes clean, or cleaner?
22 A. The ad specifically says "your smoke
23 becomes clean" here.
24 Q. And do you know if that was the, the
25 way it was run, as clean, or as cleaner?

186

1 A. I don't know.
2 Q. If it says that the smoke comes
3 clean, is it reasonable, in your opinion, to interpret
4 that to mean that the smoke won't contain harmful
5 elements?
6 MR. ERNY: Objection.
7 A. I don't think that's reasonable to
8 assume.
9 Q. Is it reasonable to assume that the
10 smoke won't contain carcinogens?
11 MR. ERNY: Objection.
12 A. I don't know that that's reasonable
13 to -- I wouldn't say that that's reasonable to assume
14 either.
15 MR. BERNEY: We're going to mark as
16 Plaintiffs' Exhibit 10 another advertisement from The
17 Evening Post, which essentially says in the middle of
18 it "You're smart to smoke Viceroy."
19 (Whereupon, the hereinabove referred
20 to document was marked Plaintiffs' Exhibit Number 10,
21 and attached hereto.)
22 Q. Have you ever seen this particular
23 advertisement or something with a, a similar theme to
24 it?

25 (The document is handed to the
witness.)

187

1 A. I don't know if it's this particular
2 ad, but something similar, yes.
3 Q. And is the advertising campaign,
4 quote, unquote, "You're smart to smoke Viceroy"?
5 A. That's what it says, yes.
6 Q. And then below it says, "The Filter
7 Tip Is Better For You," and then it goes on to say,
8 "No tobacco crumbs to stain your teeth. Throat
9 irritants are checked," et cetera, et cetera. What's
10 your understanding of, of, of the language you're
11 smart to smoke Viceroy?
12 A. What it says to me is that if you're
13 smoking cigarettes it's smarter -- or you're smart if
14 you smoke this Viceroy because it has a filter tip and
15 the filter tip enables you to keep the tobacco crumbs
16 from staining your teeth, et cetera, what it says at
17 the bottom.
18 Q. Is it supposed to appeal to people
19 who have concerns about their health or want to
20 safe-guard their health?
21 MR. ERNY: Objection.
22 A. I didn't design this ad or work on
23 this ad. I don't know who it was intended to appeal
24 to.
25

188

1 Q. Does, does it state that to you when
2 you look at it, not explicitly, but do you see that?
3 A. To me this could appeal to someone
4 who's just concerned tobacco getting in your teeth.

5 Q. How about the part where it says
6 throat irritants are checked?
7 A. To me then that would appeal to
8 someone who would -- who smokes currently who would
9 prefer not to have as much throat irritant.
10 Q. Because they're trying to protect
11 their throat from irritants?
12 MR. ERNY: Objection.
13 Q. Is that right?
14 A. I don't know -- I don't know how to
15 respond to your question. If that's because some --
16 it would appeal to someone, I don't know why that
17 particular thing would appeal to someone, but what it
18 says to me, as I said, what it says to me is that this
19 ad would appeal to someone who was interested -- who
20 was currently smoking another cigarette who was
21 interested in having a filter tip there either because
22 they didn't want the crumbs and just -- in their -- or
23 to stay in their teeth; because they didn't want as
24 many throat irritants; because they didn't
25 want their -- they wanted the cork tip to save their

189

1 lips, et cetera, as it says there.
2 Q. In 1942, do you know what basis the
3 person who devised this ad would have to say that the
4 throat irritants are checked?
5 A. I don't know specifically, other
6 than the fact that it does have a filter.
7 Q. Suppose that the filter does not
8 check throat irritants, would this then be an example
9 of false advertising?
10 MR. ERNY: Objection.
11 A. If they had evidence to support the
12 fact that throat irritants were not checked as a
13 result of the filter, that is correct.
14 Q. How about if they didn't have any
15 evidence one way or the other?
16 MR. ERNY: Objection.
17 A. I would say that in order to state
18 throat irritants are checked, they would have evidence
19 to state that throat irritants were checked.
20 Q. So then if they didn't this would be
21 an example of false advertising; is that correct?
22 A. In my definition of false
23 advertising, yes.
24 MR. BERNEY: We're going to mark
25 another ad, which states Buy-Lines, B-u-y, hyphen,

190

1 L-i-n-e-s, by Nancy Sasser, S-a-s-s-e-r, as
2 Plaintiffs' Exhibit 11.
3 (Whereupon, the hereinabove referred
4 to document was marked Plaintiffs' Exhibit Number 11,
5 and attached hereto.)
6 (The document is handed to the
7 witness.)
8 Q. Have you ever seen this document or
9 something similar?
10 A. No, I don't believe so.
11 Q. Okay. Do you know whether or not
12 that's something that Brown & Williamson may have run?
13 A. I don't know.
14 MR. BERNEY: All right, here's
15 another one. This is an advertisement that talks

16 about dentists advising to smoke Viceroy, and this is
17 Plaintiffs' Exhibit 12.
18 (Whereupon, the hereinabove referred
19 to document was marked Plaintiffs' Exhibit Number 12,
20 and attached hereto.)
21 (The document is handed to the
22 witness.)
23 Q. Have you ever seen these various
24 advertisements or something similar?
25 A. Yes, I have.

191

1 Q. And is this an ad campaign that
2 Brown & Williamson ran involving, involving
3 advertising that dentists recommends smoking Viceroy?
4 A. Yes, I believe so.
5 Q. Do you know how these various
6 advertisements came into being?
7 A. No.
8 Q. Do you know if Ted Bates was
9 responsible for hoping to formulate or devise these
10 particular ad campaigns?
11 A. I believe Ted Bates developed these
12 campaigns, yes.
13 Q. Do you know what basis Brown &
14 Williamson had for saying, for example, on the right
15 of the column, "Thirty-nine thousand four hundred and
16 sixty-eight dentists say smoke Viceroy cigarettes"?
17 A. I would assume that they would have
18 to have evidence to state that thirty-nine thousand
19 four hundred and sixty-eight dentists actually said
20 that.
21 Q. How does one even compile that kind
22 of information?
23 A. My understanding is that they --
24 there were actually some survey cards of some sort
25 sent to dentists and asked them to respond to the

192

1 survey and send it back, is my understanding.
2 Q. And have -- has Brown &
3 Williamson -- do you know of any other occasions where
4 Brown & Williamson has sent out surveys to health
5 professionals to, to get their opinions regarding any
6 of, any of Brown & Williamson's cigarette brands?
7 MR. ERNY: Objection.
8 A. I'm not aware of any.
9 Q. Have you seen -- have you ever seen
10 any documents that reference, other than
11 advertisements, that reference these thirty-nine
12 thousand dentists?
13 A. No, I've not.
14 Q. Do you know if there are any
15 documents that exist that name any of these particular
16 dentists?
17 A. I don't know.
18 Q. Do you know if there are any
19 documents that exist that discuss the various surveys
20 that may have been sent out to dentists?
21 A. I don't know.
22 Q. On this type of survey how is it
23 that you would even be able to ask the question so
24 that the dentists would say or recommend smoking
25 Viceroy cigarettes?

193

1 A. I don't know. I have not actually
2 seen the survey.
3 Q. Would Brown & Williamson be
4 responsible for sending out the surveys and gathering
5 the information and analyzing the information, or
6 would that be something that would be left generally
7 to the ad agency?
8 A. I don't know.
9 Q. Sitting here today, can you, can you
10 give me the name of one dentist, out of the
11 thirty-nine nine thousand four hundred and
12 sixty-eight, who allegedly said smoke Viceroy
13 cigarettes?
14 A. I don't know any of the dentists'
15 names, no.
16 Q. Suppose there was no basis for
17 saying thirty-nine thousand four hundred and
18 sixty-eight dentists say smoke Viceroy cigarettes,
19 would you consider that this would then be an example
20 of deceptive advertising?
21 MR. ERNY: Objection.
22 A. Yes, I would, if there were no
23 basis.
24 Q. Do you know of any way of verifying
25 that any dentist, little alone thirty-nine thousand
194
1 dentists, recommended to smoke Viceroy cigarettes at
2 this particular time period?
3 A. I don't know any way of verifying
4 it. I know from my experience in the marketing
5 department, we couldn't make any claims of sort
6 without having documentation verified and passed
7 through our legal department. I don't know if that
8 was the case; I'm assuming that was the case back in
9 this time period as well --
10 Q. You're assuming --
11 A. -- probably.
12 Q. Do you have any, any reason, other
13 than pure assumption on your part, to, to state that?
14 A. Based on the fact my -- that -- my
15 assumption is based on my twenty-four years of
16 experience with Brown & Williamson. It's been the
17 case ever since I've been there.
18 MR. BERNEY: Let's mark this as
19 Plaintiffs' Exhibit 12. This is a --
20 THE WITNESS: This was 12.
21 MR. BERNEY: I'm Sorry. Thank you.
22 Let's mark this as Plaintiffs' Exhibit Number 13.
23 This one says, "Thirty-nine thousand four hundred and
24 sixty-eight dentists say smoke Viceroy cigarettes,"
25 and it's just a -- the, the whole page constitutes
195

1 that particular advertisement.
2 (Whereupon, the hereinabove referred
3 to document was marked Plaintiffs' Exhibit Number 13,
4 and attached hereto.)
5 (The document is handed to the
6 witness.)
7 Q. Do you recognize Plaintiffs' Exhibit
8 13 to be a Brown & Williamson advertisement for
9 Viceroy cigarettes?
10 A. It appears to be, yes.
11 MR. BERNEY: All right. Let's mark

12 this next advertisement as Plaintiffs' Exhibit 14,
13 which states "Filtered cigarette smoke is better for
14 your health and Viceroys filter your smoke."
15 (Whereupon, the hereinabove referred
16 to document was marked Plaintiffs' Exhibit Number 14,
17 and attached hereto.)
18 Q. Is this a Brown & Williamson
19 advertisement for Viceroy cigarettes?
20 A. I believe it is, yes.
21 Q. And the top of it says, "Filtered
22 cigarette smoke is better for your health and Viceroys
23 filter your smoke;" is that correct?
24 A. Yes.
25 Q. And do you know what time period

196

1 this particular advertisement ran?
2 A. It says 1952 at the bottom of the
3 ad. I'm assuming that's the time period.
4 Q. Do you know how long something like
5 this would have run, this particular ad, or something
6 similar where it says filtered cigarette smoke is
7 better for your health?
8 A. No, I don't.
9 Q. Other than the documents that you've
10 already pointed us to, are -- do you know of any other
11 documents in this time period to support the assertion
12 that filtered cigarette smoke better is for your
13 health?
14 A. No.
15 MR. ERNY: You want to take a break?
16 MR. BERNEY: Yeah, let's take a
17 break. Off the record.
18 MR. ERNY: Off the record.
19 (Whereupon, a short recess was
20 taken.)
21 (Mr. Raborn comes back into the
22 room.)
23 MR. BERNEY: Before we -- before we
24 get started, I want to know if you have any objection
25 to substituting that one as Plaintiffs' Exhibit 8?

197

1 It's, it's the same one, it's just larger. That's the
2 one that you provided.
3 MR. ERNY: Okay. No, I, I don't
4 have -- I don't have an objection to that. If it
5 isn't exactly the same one, we have 1936-A --
6 MR. BERNEY: Uh-huh.
7 MR. ERNY: -- 1936-B, we have 1936
8 here. If you're okay with that we can substitute, or
9 we can make it Plaintiffs' Exhibit 8A, if you want.
10 MR. BERNEY: Why don't we do the
11 latter.
12 MR. ERNY: Can we have it marked as
13 Exhibit -- Plaintiffs' Exhibit 8A, please.
14 MR. BERNEY: Okay. So what we're
15 going to do, just in summary, is mark as Plaintiffs'
16 Exhibit 8A, something that looks almost identical to
17 Plaintiffs' Exhibit 8, with the exception, I believe,
18 that 8A just has 1936 marked at the top, and Exhibit 8
19 has 1936-A and B marked at the top.
20 THE COURT REPORTER: Do you want to
21 go back on the video?
22 MR. BERNEY: Not for that, but we

23 will. I just want this marked as --
24 The VIDEOGRAPHER: Okay.
25 MR. BERNEY: -- Exhibit 8A, and then
198

1 we can go on the video.
2 (Whereupon, the hereinabove referred
3 to document was marked Plaintiffs' Exhibit Number 8A,
4 and attached hereto.)

5 MR. BERNEY: I'm sorry. I stole
6 your pen. All right. Thank you.

7 MR. ERNY: Are we ready to go back
8 on?

9 MR. BERNEY: Yes.

10 THE VIDEOGRAPHER: We're on.

11 MR. ERNY: Great.

12 MR. BERNEY: I think we're up to
13 Plaintiffs' Exhibit 15? Okay. Why don't we mark this
14 next advertisement as Plaintiffs' Exhibit 15. The top
15 of it says 1949, and it reads, "Read January Reader's
16 Digest to Find Out Why Filtered Cigarette Smoke Is
17 Better For Your Health."

18 (Whereupon, the hereinabove referred
19 to document was marked Plaintiffs' Exhibit Number 15,
20 and attached hereto.)

21 (The document is handed to the
22 witness.)

23 Q. Have you ever seen this particular
24 advertisement before?

25 A. Yes, I have.

199

1 Q. And do you know for how long this
2 ran?

3 A. No, I don't.

4 Q. And do you understand the -- this
5 Reader's Digest -- I take it this Reader's Digest
6 article is the one that you talked about, the 1950
7 article?

8 A. Yes.

9 Q. And when you read the -- did you
10 actually read the entire article?

11 A. Yes, I did.

12 Q. And is it your understanding that
13 the article actually said filtered cigarette smoke is
14 better for your health?

15 A. I don't recall specifically what it
16 said. I do recall the article referring to filtered
17 cigarettes, yes.

18 Q. Do you recall the article saying,
19 for example, filtered cigarette smoke is better for
20 your health, or something approximating that?

21 MR. ERNY: Objection; asked and
22 answered.

23 A. I don't recall exactly what it said.
24 I just recall it talking about filter cigarettes.

25 Q. In your opinion, does that Reader's

200

1 Digest article support the claim represented here that
2 filtered cigarette smoke is better for your health?

3 MR. ERNY: Objection. The document
4 speaks for itself.

5 A. In my opinion, that article, from my
6 recollection of that article, does support this and
7 that this particular ad says, Reader's Di -- read

8 Reader's Digest article to find out why filtered
9 cigarette smoke is better for your health. It tells
10 how cigarette filters take out nicotine. Yes, I do
11 think that that article supports that.

12 Q. I'm sorry. I did not -- I did not
13 follow what you just said. Tell me again how the
14 Reader's Digest article that you read, in your
15 opinion, supports the claim that filtered cigarette
16 smoke is better for your health.

17 MR. ERNY: Object.

18 A. It's my recollection of the Reader's
19 Digest article, how harmful are cigarettes, that
20 particular article, talks about filtered cigarettes
21 and the fact that filters filter out tar and nicotine.

22 Q. I think I understand now. So, is it
23 the case then that Reader's Digest does not talk about
24 filtered cigarette smoke being better for your health?

25 MR. ERNY: I'm going to object.

201

1 A. Again, I don't recall Reader's
2 Digest talking about better for your health. I do
3 recall Reader's Digest talking about filtered
4 cigarettes, and filtered cigarettes filtering out some
5 elements of tar and nicotine.

6 Q. It, it would appear from this
7 advertisement that what is being represented is that
8 Reader's Digest actually says that filtered cigarette
9 smoke is better for your health. Do you interpret
10 this ad that way as well?

11 MR. ERNY: Objection.

12 A. I interpret this ad basically the
13 way it's stated here, Reader -- "Read January Reader's
14 Digest To Find Out Why Filtered Cigarette Smoke Is
15 Better For Your Health." It tells how cigarette
16 filters take out nicotine."

17 Q. Do you consider this particular
18 advertisement to be misleading?

19 MR. ERNY: Objection.

20 A. No, I do not.

21 Q. Do you think that this particular
22 advertisement might confuse somebody who sees it?

23 MR. ERNY: Objection.

24 A. I couldn't answer how confused or
25 non-confused a particular individual would be. It

202

1 does not confuse me.

2 Q. Does it not appear as though this
3 Reader's Digest article will state that filtered
4 cigarette smoke is better for your health?

5 MR. ERNY: Objection. That's been
6 asked and answered.

7 A. What is clear to me in reading this
8 ad -- in reading this ad, is that Reader's Digest does
9 talk about how cigarette filters take out nicotine.

10 MR. BERNEY: Let's mark as
11 Plaintiffs' Exhibit 16 something very similar, except
12 at the top of it it says 1950. It talks -- it says,
13 "January Reader's Digest Tells Why Filtered Cigarette
14 Smoke Is Better For Your Health," and then it goes on
15 and says, Tells How Cigarette Filters Take Out
16 Nicotine."

17 (Whereupon, the hereinabove referred
18 to document was marked Plaintiffs' Exhibit Number 16,

19 and attached hereto.)
20 MR. ERNY: Now, Mr. Berney, just for
21 the record, I don't deny that Exhibit 16 has a 1950 at
22 the top and Exhibit -- I'm sorry. Exhibit 16 has a
23 1950 at the top and Exhibit 15 has a 1949 at the top,
24 but that doesn't appear to be part of the original
25 article, and, and just so that the record's clear, I

203

1 would not agree that it is part of the original
2 article --

3 MR. BERNEY: Okay.

4 MR. ERNY: -- or, or advertisement.

5 Q. Do you know how long these type of
6 advertisements ran, meaning advertise --
7 advertisements like Plaintiffs' Exhibit 15 and 16?

8 A. By these types of advertisements, do
9 you mean the Reader's Digest article referenced?

10 Q. Exactly.

11 A. I don't know exactly how long they
12 ran. I recall seeing them, just a couple of
13 executions of those, in all the ads that I've looked
14 at. I did not get the impression that they ran for a
15 long period of time.

16 Q. A long period of time, meaning they
17 could have -- I'm, I'm sorry. Not a long period of
18 time, meaning they could have ran for a couple of
19 years?

20 A. That's not my impression.

21 Q. Do you know if these ads ran, let's
22 say, in '50, '51 or '52?

23 A. I don't know. I'm not aware of
24 that.

25 MR. BERNEY: Let's mark this

204

1 document as Plaintiffs' Exhibit 17. It says, "An
2 Important Message To Cigarette Smokers About the
3 Revolutionary New Viceroy Health-Guard Filter." I
4 only have one copy, but this is a document that you
5 provided to me earlier today.

6 MR. ERNY: Okay.

7 MR. BERNEY: So it's, it's part of
8 that package.

9 (Whereupon, the hereinabove referred
10 to document was marked Plaintiffs' Exhibit Number 17,
11 and attached hereto.)

12 (The document is handed to the
13 witness.)

14 Q. The document that we've marked as
15 Plaintiffs' Exhibit 17, have you seen that document
16 before?

17 A. Yes, I have.

18 Q. Would you mind following along with,
19 with the copy that your attorney has, because that's
20 my only one and I want to take a look at that.

21 (The document is handed to counsel.)

22 Q. I'm going to go to the third
23 paragraph in, in that and tell me if, if I don't read
24 this correctly. It states, "Because of this
25 extraordinary filtering action, independent laboratory

205

1 experiments conducted on the same type of smoking
2 apparatus used in U.S. Government tests have proved
3 conclusively that Viceroys are better for your health

4 than any other leading cigarette," and then, and then
5 it continues. Do you know what it's referring to when
6 it states U.S. Government tests have proved
7 conclusively that Viceroy cigarettes are better for your health
8 than any other leading cigarette?

9 A. My understanding that that means
10 that they have done tests to prove that Viceroy
11 cigarettes with the filter tip remove more tar and
12 nicotine than leading standard cigarettes of the same
13 size.

14 Q. And that means that Viceroy cigarettes are
15 better for one's health than any other leading brand
16 of cigarettes?

17 A. That's what it states here, yes.

18 Q. And if that's not true, would you
19 consider this then to be deceptive, what we've marked
20 as Plaintiffs' Exhibit 17?

21 MR. ERNY: Objection.

22 A. I would say that if it's not true
23 that they have proof that Viceroy cigarettes do filter
24 out more nicotine and tar than other leading
25 cigarettes, then that would be deceptive.

206

1 Q. How about if they do not have proof
2 that Viceroy cigarettes -- that they don't have evidence that
3 the U.S. Government tests have proved conclusively
4 that Viceroy cigarettes are better for your health than other
5 leading cigarettes; if they don't have evidence to
6 support that, would you consider Plaintiffs' Exhibit
7 17, this particular document, to be deceptive?

8 MR. ERNY: I, I, I object to the
9 form and because I believe that's not terribly
10 different from the last question you asked. So it's
11 been asked and answered.

12 MR. BERNEY: And, and just in
13 response, I don't think she answered that particular
14 question, but go ahead.

15 A. I'm sorry. Could you say the
16 question one more time, please.

17 Q. Sure. If Brown & Williamson did not
18 have evidence that U.S. Government tests have proved
19 conclusively that Viceroy cigarettes are better for your health
20 than any other leading cigarette, would you consider
21 this particular document, that we've marked as
22 Plaintiffs' Exhibit 17, deceptive?

23 MR. ERNY: Object to the form, and,
24 and again, asked and answered.

25 A. And I would say that if Brown &

207

1 Williamson -- in response to your question, that if
2 Brown & Williamson did not have proof conclusively
3 that Viceroy cigarettes do not filter out more tar and
4 nicotine than other leading cigarettes, then that
5 would be deceptive, yes.

6 Q. I'm not talking about what it does
7 and doesn't filter out. I'm specifically talking
8 about it being better for your health.

9 MR. ERNY: Object.

10 Q. Do you, do you understand that
11 particular distinction?

12 MR. ERNY: I'm, I'm going to object
13 because you're taking one portion of the advertisement
14 out of context with the rest, and she keeps putting it

15 back into context.
16 A. And again, that is my point. The
17 reference here to Viceroy's being better for your
18 health, to me, as I read this, is directly related to
19 the fact that Viceroy filter tips filter out more tar
20 and nicotine than other leading cigarettes. So in
21 response to your question, if that -- if Brown &
22 Williamson did not have proof conclusively that
23 Viceroy cigarettes did, in fact, filter out more tar
24 and nicotine than other leading cigarettes, I would
25 say this is deceptive.

208

1 Q. Suppose Brown & Williamson did not
2 have conclusive proof that filtering out the most tar
3 and nicotine makes the cigarette better for one's
4 health, would you then consider this particular
5 document, that we've marked as Plaintiffs' Exhibit 17,
6 deceptive?

7 MR. ERNY: I'm, I'm going to object.

8 Q. You can answer.

9 A. Oh, I'm sorry. Again, I will -- I
10 would not see that as deceptive because I believe it's
11 very clear in this, what I believe is a carton insert,
12 actually, not an advertisement, but I believe it's
13 very clear in this communication what they mean by
14 better for your health.

15 Q. All right, this is a current insert,
16 you're saying?

17 A. That's my understanding, because it
18 says at the very top that "Viceroy cigarettes in this
19 carton."

20 Q. I see. And do you know how long --
21 or do you know when these were included as part of the
22 carton?

23 A. No, I do not.

24 Q. Do you know what time period we're
25 talking about?

209

1 A. No, I do not.

2 Q. Can you estimate what time period; I
3 mean it's obviously somewhere in the '50s or late
4 '40s; is that right?

5 A. Yes, I would have to look back
6 through some previous documents, but I would estimate
7 it's the same time period when they were talking about
8 the health-guard filter in the advertisements.

9 MR. ERNY: To answer the question,
10 if you believe that it would be beneficial to look
11 through the ads that are marked as exhibits, I, I
12 would like you to do that.

13 MR. BERNEY: I have no objection --

14 THE WITNESS: Can I do that?

15 MR. BERNEY: -- to your doing that.

16 A. I believe, in looking through
17 Exhibit 6, when it references advertisement that
18 speaks specifically to the health-guard filter, it's
19 in 1952, I believe that is the only -- and in 1953.
20 So my estimation would be that this would be
21 approximately that time period.

22 Q. And could it be slightly afterwards
23 as well?

24 A. I don't know.

25 Q. You wouldn't rule that out, though?

1 MR. ERNY: Objection.
 2 A. I don't know. It's possible.
 3 MR. BERNEY: This seems like a, a
 4 decent breaking point.
 5 MR. ERNY: Okay, just, just so that
 6 we're clear, we have a -- we have an agreement to
 7 continue the deposition, but we have an agreement to
 8 disagree about the location and obviously we have to
 9 talk about the timing.
 10 MR. BERNEY: Correct.
 11 MR. ERNY: Okay.
 12 MR. BERNEY: Okay.
 13 MR. ERNY: Thank you for your
 14 consideration.
 15 MR. BERNEY: Thank you.
 16 MR. ERNY: We would like to reserve
 17 signature.
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STATE OF KENTUCKY)
) SS.
 COUNTY OF JEFFERSON)

I, Gerry Hall Fulton, a
 Notary Public, within and for the State at Large, do
 hereby certify that the forgoing deposition was taken
 before me at the time and place and for the purpose in
 the caption stated; that the witness was first duly
 sworn to tell the truth, the whole truth and nothing
 but the truth; that the deposition was reduced to
 shorthand writing by me in the presence of the
 witness; that the foregoing is a full, true, and
 correct transcript of my stenographic notes; that a
 request was made that the witness read and sign the
 deposition; that the appearances were as stated in the
 caption.

Witness my signature this 10th day of July 2001

My commission expires January 15, 2005.

Gerry Hall Fulton
 Court Reporter and Notary Public
 State at Large Kentucky

STATE OF KENTUCKY)
) SS.
 COUNTY OF JEFFERSON)

I, Sharon Smith, the undersigned deponent, have this date read the foregoing pages of my deposition, numbers one through 210, and with the changes noted below, if any, these pages constitute a true and accurate transcription of my deposition given on June 22nd, 2001, at the time and place stated herein.

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Sharon Smith

SWORN TO AND SUBSCRIBED BEFORE
ME THIS _____ DAY OF _____ 2001

NOTARY PUBLIC,
STATE OF KENTUCKY, AT LARGE

MY COMMISSION EXPIRES: _____